United States Court of Appeals

for the Second Circuit

APPENDIX

75-7203

United States Court of Appeals

FOR THE SECOND CIRCUIT

ROBERT ABRAHAMSON and
MARJORIE ABRAHAMSON,
Plaintiffs-Appellants,

—v.—

MALCOLM K. FLESCHNER, WILLIAM J. BECKER,
HAROLD B. EHRLICH, LEON POMERANCE,
FLESCHNER BECKER ASSOCIATES, and
HARRY GOODKIN & COMPANY,
Defendants-Appellees.

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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JUL 28 1975
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SECOND CIRCUIT

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Docket Entries

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE CARTER ~~JUDGE CURFEIN~~

Jury demand date:

71 CIV. 344

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
ROBERT ABRAHAMSON AND MARJORIE ABRAHAMSON, VS. MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, AND HARRY GOODKIN & COMPANY.	For plaintiff: SHEA, GALLOP, CLIMENKO & GOULD 330 Madison Avenue, N.Y.C.N.Y. 10017 For defendant: D'Amato, Costello & Shea (for Harry Goodkin & Co 116 John St. NY 10038 BA 7-5189 Hill Betts & Nash (for Harold B. Ehrlich 26 Broadway NY 10004 Sullivan & Cromwell (for Fleschner, Becker and Fleschner Becker Associates). 48 Wall St. NY 10005 HA 2-8100

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC	
J.S. 5 mailed X	Clerk	1-25-71	SHEA G	15	15
J.S. 6 mailed	Marshal				
Basis of Action: VIOL. S.E.C. ACT. 1934 $1,254,800	Docket fee				
Action arose at:	Witness fees				
	Depositions				

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ROBERT ABRAHAMSON ET-ANO vs. MALCOLM K. FLESCHNER, wb-ano

JUDGE CARTER

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DATE	PROCEEDINGS	Date of Judgment Note
Jan25-71	Filed Complaint. Issued Summons.	
Feb.8-71	Filed Notice of Deposition of Plaintiff Robert Abrahamson.	
Feb.8-71	Filed Notice of Deposition of Marjorie Abrahamson.	
Feb.16-71	Filed Notice of appearance for deft. Harry Goodkin & Co.	
Feb.18-71	Filed stipulation and order adjourning depositions of plaintiffs to 3/18/71. So ordered. Wyatt, J.	
Feb.18-71	Filed stipulation and order extending deft. Harry Goodkin & Co.'s time to answer or make any motion to 3/3/71. Soordered. Wyatt,J.	
Feb.22,71	Filed stip and order that time of deft Harold . Ehrlich to Answer the complaint is extended to 3-15-71 Frankel D.	
Mar 9,71	Filed stip and order that time of deft Malcolm K. Fleschner, William J. Becker, Leon Pomerance and Fleschner Becker Associates, to Answer the complaint is extended to 3-15-71 Bonsal J.	
Mar.16-71	Filed stipulation and order extending deft. Harold B. Ehrlich's time to answer complaint to 3/22/71. So ordered. Bonsal,J.	
Mar 16-71	Filed Summons with Marshals Ret. Served MALCOLM K.FLESCHNER by Wm.Becker On 2-17-71 SERVED Wm. Becker in person on 2-17-71 SERVED HAROLD B. Ehrlick on 2-1-71 SERVED Harry Goodkin by Mr.E. E. Jedeikin on 1-27-71	
Mar.16-71	Filed stipulation and order extending defts. Malcolm K. Fleschner, William J.Becker, Leon Pomerance and Fleschner Becker Associates' time to answer complaint to 3/22/71; and adjourning depositions as indicated. So ordered. Bonsal,J.	
Mar.22-71	Filed ANSWER of Harold B. Ehrlich to complaint.	HB&N
Mar.23-71	Filed ANSWER of MalcolmK.Fleschner,William J.Becker and Fleschner Becker Associates, to complaint.	S&C
Mar 23,71	Filed stip and order that time of deft, Harry Goodkin & Co., to Answer the complaint is extended to 3-25-71 Cannella J.	
Mar.25-71	Filed ANSWER of defts. Harry Goodkin& Co. to complaint, and jury demand.	DC&S
APR 25-72	Filed Notice to take deposition.	
Apr.27-72	Filed stipulation and order adjourning deposition of Fleschner Becker Associates, etc. So ordered. McLean,J.	
Jun 5-72	Filed stipulation and order adjourning deposition of Fles[illegible] Becker Associates, as indicated,etc. So ordered. Cannella, J.	
Jun 19-72	Filed memorandum in support of Pltfs. motion to compel production of documents.	
25 July 1973	Filed notice of reassignemnt to Carter, J. m/n.	
8-1-73	Filed pltfs. notice to take depositinn of Leonard Halpern on Sept. 6, 1973.	
8-1-73	Filed pltfs. notice to take deposition of Howard Taylor on Sept. 7, 1973.	
Sep.11,73	Filed Deft.Fleschner, Interrogatories.	
June18-73	Filed pltfs. motion directing defts. Fleschner,Becker,Fleschner Becker Assoc. and Harry Goodkin and Co. to produce documents,etc. and affdt. ret. June 22, 1973.	
Oct.3-73	Filed memo end. onpltf's. motion dated June 18-73--Motion granted exactly at pre trial hearing. Carter, J. m/n	
[illegible]-73	PRE-TRIAL CONFERENCE HELD BY Carter, J.	
Jan-25-74	Filed defts (H. Goodkin & Co.) affdvt. and notice of motion for summary judgment ret. 2-8-74	
Jan-25-74	Filed deft. Goodkin's memorandum of law in support of motion for summary judgment.	
Jan-29-74	Filed affdvt. and defts. (Harold B. Ficher) notice of motion for summary judgment - ret. Feb-8-74	
Jan-29-74	Filed deft. Ficher's memorandum of law in support of motion for summary judgment.	
Jan-28-74	Filed defts. (Fleschner, Fleschner Associates and W.J. Becker) affdvt. and notice of motion for summary judgment.	
Jan-28-74	Filed defts. Fleschner, Fleschner Associates and W.J. Becker's memorandum of law in support of motion for summary judgment.	

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Robert Abrahamson, etano. vs. Malcolm K. Fleschner, et. al.

71 CIV 3[illegible] page 3 Judge Carter

DATE	PROCEEDINGS
Mar 12-74	Filed plaintiffs affidavits and notice of motion for summary judgment. - ret. 3-22-74.
Mar 12-74	Filed plaintiffs memorandum of law in support of motion for summary judgment and in opposition to defts' motion for summary judgment.
Mar 12-74	Filed plaintiffs affdvt. of Ronald H. Alenstein re motions for summary judgment by pltf. and deft.
Apr-23-74	Filed affdvt. of Dorian Goldstein on behalf of deft. Harry Goodkin & Co. in opposition to pltf's motion for summary judgment.
Apr-23-74	Filed memorandum of law on behalf of deft. Harry Goodkin & Co. in support of its motion for summary judgment and in opposition to pltf's motion for summary judgment.
Apr-25-74	Filed statement of defendants Fleschner, Becker and Fleschner Becker Associates pursuant to Rule 9(g) in opposition to pltf's motion for summary judgement.
Apr-25-74	Filed defendants Flescher, Becker and Fleschner Becker Associates memorandum of law in opposition to pltf's motion for summary judgment, and in support of their motion for summary judgment.
Apr-25-74	Filed statement of deft. Harry Goodkin & Co. pursuant to Rule 9(g)
Apr-30-74	Filed deft. Harold B. Ehrlich's statement pursuant to Rule 9(g)
Apr-30-74	Filed deft. Harold B. Ehrlich's memorandum in support of his motion for summary judgment.
May-28-74	Filed pltf's reply brief in support of their motion for summary judgment and in opposition to defendants' motion for summary judgment
03-07-75	Filed deposition of defts. William J. Becker and Fleschner Becker Associates on July 7, 1972.
03-07-75	Filed deposition of defts. Malcolm K. Fleschner and Fleschner Becker Associates on July 6, 1972.
03-07-75	Filed deposition of Leonard J. Halpern on September 12, 1973.
03-07-75	Filed deposition of Harry Goodkin & Company, on February 25, 1972.
03-07-75	Filed deposition of Marjorie Abrahamson on April 14, 1971.
03-07-75	Filed deposition of (continued deposition) Majorie Abrahamson on July 8, 1971.
03-07-75	Filed deposition of Dr. Robert Abrahamson on September 20, 1971.
03-07-75	Filed deposition of Dr. Robert Abrahamson (continued deposition) on October 27, 1971.
03-04-75	Filed O&J [illegible] #41[illegible]...Plaintiffs have shown no damages compensable under law, [illegible] to all defendants. -- so ordered. - Carter, J. m.o.

D. C. 120 Criminal Continuation Sheet

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - -x

ROBERT ABRAHAMSON and
MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER,
WILLIAM J. BECKER, HAROLD
B. EHRLICH, LEON POMERANCE,
FLESCHNER BECKER ASSOCIATES,
and HARRY GOODKIN & COMPANY,

Defendants.

- - - - - - - - - - - - - - - - - - -x

COMPLAINT

Plaintiffs, by their attorneys Shea Gallop Climenko & Gould, for their complaint herein allege:

1. The jurisdiction of the Court is invoked under the Investment Advisers Act of 1940 (15 U.S.C. §§80b-1 et seq.), and The Securities Exchange Act of 1934 (15 U.S.C. §§78a et seq.), in particular 15 U.S.C. §§80b-14 and 78aa, and on principles of pendant jurisdiction. The acts and transactions below alleged took place in substantial part in the Southern District of New York, and defendants are all found, or transact business, in such District.

2. At all times after about March, 1966, defendant Fleschner Becker Associates ("FBA") was and is a limited partnership having its principal offices in the City and State of New York, the principal purpose of which was to invest and trade in securities.

3. In or about April, 1966, FBA became the successor to the Fleschner Co., which from about July 1, 1965, to about March 31, 1966, was a limited partnership, the principal purpose of which was to invest and trade in securities.

4. Defendant Malcolm K. Fleschner was a general partner of the Fleschner Co., the person responsible for its formation, and the person who solicited participations therein. At all times after FBA succeeded the Fleschner Co. defendant Fleshner also was and still is a general partner of FBA.

5. Defendant William J. Becker, at all times after about March, 1966, was and still is a general partner of FBA.

6. Defendant Harold B. Ehrlich was a general partner of FBA from about October 1, 1968 to about September 30, 1969.

7. Defendant Leon Pomerance was a general partner of FBA from about June 1, 1969, to about December, 1970.

8. On information and belief, at all relevant times, defendant Harry Goodkin & Company ("Goodkin") was and still is a partnership of certified public accountants, with its principal place of business in the City and State of New York, engaged in the profession of accounting and auditing.

9. Plaintiffs were limited partners of the Fleschner Company until about April, 1966, became limited partners of FBA upon its succession of the Fleschner Co., and remained limited partners of FBA until September 30, 1970, when, having given timely notice, they withdrew from FBA in accordance with the terms of the FBA partnership agreement. At all times since prior to 1965, plaintiffs have been residents of the State of Connecticut.

10. Plaintiffs invested in the Fleschner Company in reliance on the statements and representations of defendant Fleschner that the Fleschner Co. would be a hedge fund modeled after a particular existing hedge fund which had shown

good performance in the face of adverse market conditions, that it would maintain a flexible investment stance, and that it would, because of its flexibility and ability to sell securities short, provide better protection for its investors than other kinds of investment funds, companies and partnerships. In addition, over a period of time beginning before their investment in the Fleschner Co. and ending after such investment, plaintiffs had conversations with defendant Fleschner concerning plaintiff Marjorie Abrahamson's ownership of certain restricted securities of a corporation with which she was connected, but from which she was planning to retire. Plaintiffs expressed their doubts concerning continued ownership of such securities, and agreed with defendant Fleschner's advice that plaintiff Marjorie Abrahamson should not own such securities after leaving such corporation, and that they should be sold at the earliest possible time. Plaintiffs relied on these conversations in investing in the Fleschner Co. Plaintiffs continued their investment in FBA when it succeeded the Fleschner Co. in reliance on substantially similar representations by and conversations with defendant Fleschner.

11. At all times since the formation of FBA, the FBA limited partnership agreement has contained a provision to the effect that any limited partner, upon the giving of specified notice, might withdraw from FBA at the end of any fiscal year and be paid his Distributive Interest or Liquidating Share (as these terms are and were defined in the agreement).

12. At all times since its formation, the management of FBA, including the power to make investment decisions, has been vested in the General Partners, in their Executive Committee, and in the Managing Partners of FBA. On information and belief, defendants Fleschner, Becker, Ehrlich, and Pomerance have all been among those responsible for the management of FBA during

the times they were or have been general partners of FBA.

13. At all times since April, 1966, the FBA General and/or Managing Partners have arranged for the annual audit of the books of FBA by independent certified public accountants selected by them, and have caused such public accountants to prepare and mail to all partners accountants' reports containing specified information about the financial condition of FBA, its operating results, and the accounts of its partners.

14. On information and belief, Goodkin was so selected to prepare and mail, and it did prepare and mail, with full knowledge that they were intended for the information of the partners of FBA and that the partners of FBA would rely thereon, accountants' reports as above described for each of the fiscal years 1966, 1967 and 1968. Plaintiffs received such reports by mail at their residence for the fiscal year 1968 in or about December, 1968 or January, 1969. On information and belief, and according to these reports, as of September 30, 1968, the capital account of plaintiff Robert Abrahamson had a value of $605,076, and the capital account of plaintiff Marjorie Abrahamson had a value of $1,141,386.

15. At all times while plaintiffs were limited partners of FBA they also received by mail at their residence a monthly report briefly summarizing the performance of FBA during the past month and the year to date. On information and belief, such monthly reports were prepared by FBA accountants under the direction of the general partners and caused to be mailed by the latter.

16. On information and belief, in or about 1968 or earlier, the Managing Partners began to cause FBA to invest heavily in securities which, because not registered under the Securities

Act of 1933 or for other reasons, were of restricted transferability and limited liquidity (herein, "restricted securities"). At no time prior to about December, 1969 or January, 1970 were plaintiffs advised of this fact, nor did they have any reason to believe it prior to such time. All of the annual and monthly reports received by plaintiffs prior to such time omitted to state the fact of and the extent of FBA's investment in restricted securities.

17. In or about December, 1969, or January, 1970, plaintiffs received annual accountants' reports for the year ended September 30, 1969, signed by certified public accountants other than Goodkin, revealing that of FBA's total assets on September 30, 1969 ($51,747,995) and of its total investments on such date ($39,355,319), the sum invested in restricted securities was $30,411,868, or approximately 77% of total investments.

18. Plaintiffs withdrew from FBA at the earliest time possible after learning that FBA had invested such substantial sums in restricted securities. Had they learned such fact in time to withdraw at the end of an earlier fiscal year, they would have done so. Plaintiffs were induced not to withdraw earlier and deterred from withdrawing earlier by reason of (1) defendants' concealment from them of the existence of and the extent of FBA's investment in restricted securities, and (2) the omission of such information in the annual and monthly reports defendants caused to be mailed to plaintiffs. Plaintiffs relied on the above described statements and representations of defendant Fleschner and on the annual and monthly reports sent to them in retaining their investment in FBA.

19. By about December 29, 1970, plaintiff Robert Abrahamson had received as his Liquidating Share the sum of $150,097, and plaintiff Marjorie Abrahamson had received as her Liquidating Share the sum of $341,565.

20. On information and belief, defendants other than Goodkin were at all relevant times "investment advisers" within the meaning of the Investment Advisers Act of 1940, and plaintiffs were their "clients" within the meaning of that Act.

21. On information and belief, plaintiffs' partnership interests in FBA and the Fleschner Company were "securities" within the meaning of the Investment Advisers Act of 1940 and the Securities Exchange Act of 1934, and their investment in and withdrawal from such partnerships constituted purchases and sales of such securities.

22. By reason of the foregoing, defendants, individually and in concert and conspiracy and mutual participation in a scheme and course of conduct, have, by use of the mails and means and instrumentalities of interstate commerce, in violation of Section 206 of the Investment Advisers Act of 1940 (15 U.S.C. §80b-6), employed a device, scheme and artifice to defraud plaintiffs, and engaged in transactions, practices and courses of business which operated as a fraud and deceit upon plaintiffs.

23. By reason of the foregoing, defendants have also, individually and in concert and conspiracy and mutual participation in a scheme and course of conduct, by use of the mails and means and instrumentalities of interstate commerce, in connection with the purchase and sale of securities and in violation of Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78(b)) and Rule 10b-5 thereunder, employed a device, scheme and artifice to defraud plaintiffs; made untrue statements

to plaintiffs of material fact and omitted to state to plaintiffs material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which operated as a fraud and deceit upon plaintiffs.

24. By reason of the foregoing, plaintiff Robert Abrahamson has been damaged in the amount of approximately $454,979, and plaintiff Marjorie Abrahamson has been damaged in the amount of approximately $799,821.

WHEREFORE, plaintiffs Robert and Marjorie Abrahamson pray for judgment against defendants in the respective amounts of $454,979 and $799,821, with appropriate interest and the costs and disbursements of this action and such other and further relief as may be just and proper.

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A member of the Firm
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661-3200

Answer of Defendant Erlich

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES and HARRY GOODKIN & COMPANY,

Defendants.

71 Civ. 344

ANSWER

Defendant, HAROLD B. EHRLICH, by his attorneys, HILL, BETTS & NASH, answering the complaint, alleges:

1. Denies the allegations contained in paragraphs 1, 12, 13, 18, 20, 21, 22, 23 and 24 of the complaint, except admits that defendant Ehrlich may be found within the Southern District of New York, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in respect of plaintiffs' withdrawal from Fleschner Becker Associates.

2. Lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17 and 19 of the complaint, except admits that defendant Ehrlich was a signatory to the Fleschner Becker Associates partnership agreement as of October 1, 1968.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. This Court lacks jurisdiction over the subject matter alleged in the complaint.

Answer of Defendant Fleschner,
Becker & Fleschner Assoc.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

5. Accord and satisfaction.

WHEREFORE, defendant Ehrlich demands judgment dismissing the complaint with prejudice, together with costs and disbursements of this action.

Dated: New York, New York
March 22, 1971

HILL, BETTS & NASH

By: Robert Nash
A Member of the Firm

Attorneys for Defendant
HAROLD B. EHRLICH
Office & P.O. Address
25 Broadway
New York, New York 10004
(212) 269-2100

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs, v. MALCOLM K. FLESCHNER, et al., Defendants.	:	71 Civ. 344
	:	ANSWER OF DEFENDANTS MALCOLM K. FLESCHNER, WILLIAM J. BECKER and FLESCHNER BECKER ASSOCIATES

Defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates, by their attorneys Sullivan & Cromwell, for their answer to the complaint herein:

1. Deny each and every allegation contained in paragraph 1 of the complaint, except admit that these defendants are found within the Southern District of New York.

2. Deny each and every allegation contained in paragraph 2 of the complaint, except admit that Fleschner Becker Associates is a limited partnership having its principal office in the City and State of New York and beg leave to refer to the partnership agreement for the provisions thereof.

3. Deny each and every allegation contained in paragraph 3 of the complaint, except admit that Fleschner Becker Associates was formed as a limited partnership on or about April 1, 1966 and that the Fleschner Co. was a limited partnership formed on or about July 1, 1965 and beg leave to refer to the partnership agreement for the provisions thereof.

4. Deny each and every allegation contained in paragraph 4 of the complaint, except admit that defendant Malcolm K. Fleschner was a general partner of the Fleschner Co. and subsequently of Fleschner Becker Associates.

5. Deny each and every allegation contained in paragraph 9 of the complaint, except admit that plaintiffs were limited partners of the Fleschner Co. from July 1, 1965 to March 31, 1966, that plaintiffs were limited partners of Fleschner Becker Associates from April 1, 1966 to September 30, 1970. Upon information and belief, plaintiffs have been residents of the State of Connecticut since prior to 1965.

6. Defendants Becker and Fleschner Becker Associates deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the complaint. Defendant Fleschner denies each and every allegation contained in paragraph 10 of the complaint.

7. Deny each and every allegation contained in paragraphs 11 and 12 of the complaint, and beg leave to refer to the partnership agreement for the precise terms and conditions thereof.

8. Deny each and every allegation contained in paragraph 13 of the complaint, except admit that Fleschner Becker Associates retained independent certified public accountants to prepare accountants' reports regarding the financial condition of Fleschner Becker Associates and that such reports were prepared by such certified public accountants.

9. Deny each and every allegation contained in paragraph 14 of the complaint, except admit that Harry Goodkin & Company was retained as independent certified public accountants by Fleschner Becker Associates to prepare the accountants' reports referred to in paragraph 8 hereof for the fiscal years ending September 30, 1966, 1967 and 1968 and beg leave to refer to said reports for the contents thereof.

10. Deny each and every allegation contained in paragraph 15 of the complaint, except admit that letters relating to the results of Fleschner Becker Associates' business were sent to the partners each month and beg leave to refer to said letters for the contents thereof.

11. Deny each and every allegation contained in paragraph 16 of the complaint.

12. Deny each and every allegation contained in paragraph 17 of the complaint and beg leave to refer to said accountants' reports for the contents thereof.

13. Deny each and every allegation contained in paragraph 18 of the complaint.

14. Deny each and every allegation contained in paragraph 19 of the complaint, except admit that, on or about December 29, 1970, plaintiff Robert Abrahamson received the sum of $150,097 and plaintiff Marjorie Abrahamson received the sum of $341,565 from Fleschner Becker Associates.

15. Deny each and every allegation contained in paragraphs 20, 21, 22, 23 and 24 of the complaint.

FIRST AFFIRMATIVE DEFENSE

16. This Court lacks jurisdiction over the subject matter alleged in the complaint.

SECOND AFFIRMATIVE DEFENSE

17. The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates demand judgment dismissing the complaint and awarding them the costs and disbursements of the action.

Dated: New York, New York
March 22, 1971

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for defendants
Malcolm K. Fleschner,
William J. Becker and
Fleschner Becker Associates,
48 Wall Street,
New York, New York 10005.
212-HA 2-8100

Answer of Defendant Harry Goodkin & Co.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

ROBERT ABRAHAMSON and MAJORIE ABRAHAMSON,

Index No. 71 Civ. 344

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES and HARRY GOODKIN & COMPANY,

ANSWER

DEFENDANTS DEMAND TRIAL BY JURY

Defendants.

- X

The defendants, HARRY GOODKIN & COMPANY, a partnership, by their attorneys D'AMATO, COSTELLO & SHEA, for their answer herein set forth:

1. The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "1" of the complaint.

2. The defendants admit each and every allegation contained in paragraph designated "2" of the complaint.

3. The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "3" of the complaint except admit in April of 1966 Fleschner Becker Associates became the successor to the Fleschner Company, which from July 1, 1965 through March 31, 1966 was a limited

partnership investing and trading in securities.

4) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "4" of the complaint except admit that Malcolm K. Fleschner was a general partner of Fleschner Company and after Fleschner Becker Associates succeeded the Fleschner Company, Fleschner also became a general partner of Fleschner Becker Associates through September 30, 1968.

5) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "5" of the complaint except admit William J. Becker was a general partner from March of 1966 of Fleschner Becker Associates through September 30, 1968.

6) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "6" of the complaint.

7) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "7" of the complaint.

8) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "8" of the

complaint except admit that defendant Harry Goodkin & Company was and is a partnership of Certified Public Accountants with its principal place of business in the City and State of New York and is engaged in public accounting.

9) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "9" of the complaint except admit the plaintiffs were limited partners of the Fleschner Company until April of 1966 and became limited partners of Fleschner Becker Associates upon its succession of the Fleschner Company and remained limited partners of Fleschner Becker Associates until September 30, 1968.

10) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "10" of the complaint.

11) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "11" of the complaint except admit that Fleschner Becker Associates' limited partnership agreement through September 30, 1968 contained a provision to the effect that any limited partner, upon the giving of specific notice, might withdraw from Fleschner Becker Associates at the end of any fiscal year and be paid his distributive interest in accordance with the terms and provisions of the agreement.

12) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "12" of the complaint.

13) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "13" of the complaint except admit that Fleschner Becker Associates arranged for an annual audit of the books and records of Fleschner Becker Associates by independent Certified Public Accountants who expressed an opinion on the balance sheet and related the statement of income expense at the close of the defendant Fleschner Becker Associates' fiscal year. In addition, they prepared schedules of partner's Capital Account.

14) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "14" of the complaint except admit that the defendant Harry Goodkin & Company expressed an opinion on the financial condition and related statement of net worth and income and expense of Fleschner Becker Associates on September 30, 1966, 1967 and 1968 and that as of September 30, 1968, plaintiff, Robert Abrahamson had a closing capital account of $605,706.40 and that Majorie Abrahamson had a closing capital account on September 30, 1968 of $1,141,386.14.

15) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "15" of the complaint.

16) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "16" of the complaint except admit that Fleschner Becker Associates invested in securities not registered under the Securities Act of 1933 as amended and that the annual reports of plaintiff did not specifically differentiate between registered and unregistered securities through September 30, 1968.

17) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "17" of the complaint.

18) The defendants deny each and every allegation contained in paragraph designated "18" of the complaint.

19) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every allegation contained in paragraph designated "19" of the complaint.

20) The defendants deny any knowledge or information thereof sufficient to form a belief as to each and every

allegation contained in paragraph designated "20" of the complaint except admit Harry Goodkin & Company was not an investment advisor and plaintiffs were not its clients.

21) The defendants deny each and every allegation contained in paragraph designated "21" of the complaint.

22) The defendants deny each and every allegation contained in paragraph designated "22" of the complaint.

23) The defendants deny each and every allegation contained in paragraph designated "23" of the complaint.

24) The defendants deny each and every allegation contained in paragraph designated "24" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

25) The allegations set forth in the complaint fail to state a claim against the defendant Harry Goodkin & Company upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

26) Plaintiff lacks standing to bring this suit against the defendant Harry Goodkin & Company.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

27) The time within which plaintiffs can institute any cause of action under the laws of the governing and controlling has expired and under such circumstances and the law applicable thereto, plaintiffs barred their recovery on any of the allegations set forth in the complaint as a matter of law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

28) Upon information and belief plaintiffs knew that Fleschner Becker Associates had in their portfolio certain securities which were not registered under the Securities Act of 1933 as amended and therefore are barred from recovery.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

29) Upon information and belief plaintiffs should have known that Fleschner Becker Associates had in their portfolio securities which were not registered under the Securities Act of 1933 as amended and therefore are barred from recovery.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

30) That the court lacks jurisdiction over the subject matter.

WHEREFORE, the defendant Harry Goodkin & Company demands judgment dismissing the complaint with the costs and disbursements of this action.

Dated: New York, New York

March , 1971

Yours, etc.

D'AMATO, COSTELLO & SHEA
Attorneys for Defendant
Harry Goodkin & Company

By: Mervyn S. D'Amato
A Member of the Firm
Office and P O Address
116 John Street
New York, New York 10038
Tel: 227-5189
File No: 14591

TO: SHEA, GALLOP, CLIMENKO & GOULD, ESQS.
Attorneys for Plaintiffs
330 Madison Avenue
New York, New York 10017
Tel: 661-3200

Defendant Harry Goodkin & Co.'s Motion for Summary Judgment

25a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY,

Defendants.

73 Civ. 344: RLC

NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE, that upon the annexed statement, the pleadings, the affidavits of William J. Becker and Leonard J. Halpern sworn to respectively on January 9, 1974 January 14, 1974 and submitted in support of a companion motion by defendant Fleschner Becker Associates, the depositions, and all proceedings heretofore had herein, defendant Harry Goodkin & Co. will move this court before the Honorable Robert L. Carter, U.S.D.J., at 10:00 A.M. on February 8, 1974 in the United States Courthouse, Foley Square, New York, N.Y. or as soon thereafter as counsel can be heard for summary judgment pursuant to Rule 56, Fed. R. Civ. P., dismissing the complaint herein and for such other relief as to this court may seem just and proper.

Dated: New York, N.Y.
January 25, 1974

Yours, etc.,

D'AMATO, COSTELLO & SHEA

By _____
Attorneys for Defendant
Harry Goodkin & Co.
116 John Street
New York, N.Y. 10038
Tel. (212) 227-5189

Defendant Harry Goodkin & Co.'s
Rule 9(g) Statement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

73 Civ. 344 (RLC)

MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY,

Defendants.

STATEMENT PURSUANT TO RULE 9(g)
OF THE GENERAL RULES OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Defendant Harry Goodkin & Company ("Goodkin") contends as to the following material facts there is no genuine issue to be tried:

1. Plaintiffs Marjorie Abrahamson and Robert Abrahamson reside in Stamford, Connecticut, and were from July 1, 1965 until their withdrawal on September 30, 1970 limited partners of Fleschner Becker Associates ("FBA").

2. Defendant FBA was organized on July 1, 1965 under the name The Fleschner Company with one general partner (Fleschner) and eight limited partners, including the Abrahamsons and five members of the Fleschner family.

3. From July 1, 1965 until April 1, 1966, the principal place of business of FBA was at 8 Stony Point Road, Westport, Conn. From April 1, 1966 until approximately August 1971, its principal place of business was at 330 Madison Avenue, New York, N.Y.

4. Defendant Goodkin is a firm of certified public accountants with principal offices in New York, N.Y., which examined and rendered an opinion of the statement of financial condition and related statements of net worth and income of FBA as at September 30, 196[illegible] on December 26, 1968 for the year then ended; and of similar statements for the year ended September 30, 1967, on December 15, 1967, the year ended September 30, 1966 on November 21, 1966, and the three months ended March 31, 1966 on May 3, 1966.

5. The capital contributions and withdrawals of the Abrahamsons' with respect to FBA were credited on the dates and in the amounts set forth below:

ROBERT ABRAHAMSON

Date	Capital Contributions	Withdrawals
July 1, 1965	$150,000.00	$8,000.00
Sept. 30, 1967		
Sept. 30, 1968		32,500.00
Sept. 30, 1969		70,000.00
Sept. 30, 1970		45,500.00
Distributive share on withdrawal from the partnership		150,097.00
TOTALS	$150,000.00	$306,097.00

MARJORIE ABRAHAMSON

Date	Capital Contributions	Withdrawals
July 1, 1965	$180,000.00	
Oct. 1. 1966	2,652.22	
Sept. 30, 1967		57,015.70
Oct. 1, 1967	266,847.13	
Sept. 30, 1968		58,000.00
Sept. 30, 1969		52,500.00
Sept. 30, 1970		73,500.00
Distributive share on withdrawal from the partnership		$341,565.00
TOTALS	449,499.35	$582,580.70

6. Plaintiffs made their capital deposits in FBA to participate as limited partners prior to the time that FBA issued its financial statement for the year ending 1968 and for the year ending 1967.

7. With respect to his participation as an FBA limited partner, Robert Abrahamson received not less than $156,057.00 in excess of his capital contribution.

8. With respect to her participation as an FBA limited partner, Marjorie Abrahamson received not less than #133,081.35 in excess of her capital contribution.

9. At all times the general partners of FBA were authorized under the partnership agreement to invest its capital under the partnership agreement to invest its capital in securities of any kind or nature of any person, corporation, government or entity, including securities the resale of which was restricted.

10. At all times, authority to make investment decisions for FBA was vested under the partnership agreement in its managing partners.

11. At all times, authority to determine matters concerning the valuation of securities and accounting procedures was vested under the partnership agreement in its managing partners.

12. Goodkin was without knowledge of any preference of the plaintiffs, except that specified in the partnership agreement, regarding the investment practices of FBA including investments in securities the resale of which was restricted.

Defendants Fleschner, Becker & Fleschner Becker
Assoc. Notice of Motion for Summary Judgment

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,	:	
Plaintiffs,	:	71 Civ. 344 (RLC)
-against-	:	NOTICE OF MOTION
MALCOLM K. FLESCHNER, et al.,	:	
Defendants.	:	

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of William J. Becker, sworn to the 9th day of January, 1974, and Leonard J. Halpern, sworn to the 14th day of January, 1974, and upon the pleadings and prior proceedings heretofore had herein, the undersigned will move this Court, at the United States Court House, Foley Square, New York, New York, on the 8th day of February, 1974, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for an order, pursuant to Rule 56, F. R. Civ. P., granting defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates summary judgment dismissing the complaint on the ground that there is no genuine issue as to any material fact and that said defendants are entitled to judgment as a matter of law, and for such other and further relief as to the Court may seem just and proper, together

with the costs of this action.

Dated: New York, New York

January 25, 1974

Yours, etc.

SULLIVAN & CROMWELL

By RICHARD E. CARLTON
A Member of the Firm
Attorneys for Defendants
William J. Becker, Malcolm K.
Fleschner and Fleschner Becker
Associates
48 Wall Street
New York, New York 10005
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TO:

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D'AMATO COSTELLO & SHEA
Attorneys for Defendant
Harry Goodkin & Company
116 John Street
New York, New York 10038

Defendants Fleschner, Becker & Fleschner Becker Assoc. Rule 9(g) Statement

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs, -against- MALCOLM K. FLESCHNER, et al., Defendants.	71 Civ. 344 (RLC)

STATEMENT PURSUANT TO RULE 9(g)
OF THE GENERAL RULES OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

Defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates ("FBA") contend that as to the following material facts there is no genuine issue to be tried:

1. Plaintiffs Marjorie Abrahamson and Robert Abrahamson (collectively, the "Abrahamsons"), residing in Stamford, Connecticut, were from July 1, 1965 until their withdrawal on September 30, 1970 limited partners of Fleschner Becker Associates ("FBA").

2. Defendant Malcolm K. Fleschner ("Fleschner") residing at 8 Stony Point Road, Westport, Connecticut, is and was at all times a general partner of FBA and at certain times, as trustee under certain agreements, a limited partner.

3. Defendant William J. Becker ("Becker"), residing at 4 Argyle Court, Livingston, New Jersey, was, after April 1, 1966, a general partner of FBA and at certain times, as trustee under a certain agreement, a limited partner.

4. Defendant Harold B. Ehrlich ("Ehrlich"), residing at 146 Central Park West, New York, New York, was from October 1, 1968 until his withdrawal on September 30, 1969, a general partner of FBA.

5. Defendant FBA, a limited partnership in liquidation, was organized on July 1, 1965 under the name The Fleschner Company with one general partner (Fleschner) and eight limited partners, including the Abrahamsons and five members of the Fleschner family.

6. From July 1, 1965 until April 1, 1966 the principal place of business of FBA was at 8 Stony Point Road, Westport, Connecticut. From April 1, 1966 until approximately August, 1971 its principal place of business was at 330 Madison Avenue, New York, New York.

7. The capital contributions and withdrawals of the Abrahamsons with respect to FBA were credited on the dates and in the amounts set forth below:

Robert Abrahmson

Date	Capital Contributions	Withdrawals
July 1, 1965	$150,000.00	
Sept. 30, 1967		$ 8,000.00
Sept. 30, 1968		32,500.00
Sept. 30, 1969		70,000.00
Sept. 30, 1970		45,500.00
Distributive share on withdrawal from the partnership		150,097.00
TOTALS	$150,000.00	$306,097.00

Marjorie Abrahamson

Date	Capital Contributions	Withdrawals
July 1, 1965	$180,000.00	
Oct. 1, 1966	2,652.22	
Sept. 30, 1967		$ 57,015.70
Oct. 1, 1967	266,847.13	
Sept. 30, 1968		58,000.00
Sept. 30, 1969		52,500.00
Sept. 30, 1970		73,500.00
Distributive share on withdrawal from the partnership		$341,565.00
TOTALS	$449,499.35	$582,580.70

8. With respect to his participation as an FBA limited partner, Robert Abrahamson received a profit of $156,097.00 in excess of his investment.

9. With respect to her participation as an FBA limited partner, Marjorie Abrahamson received a profit of $133,081.35 in excess of her investment.

10. At all times all limited or general partners of FBA, including the Abrahamsons, had access to all of its books, records and accounts.

11. For the periods of time during which FBA held positions in securities the sale of which was restricted, such restrictions were reflected in the books, records and accounts maintained by FBA.

12. At all times authority to make investment decisions for FBA was vested, under its partnership agreement, in its general partners.

13. During certain times prior to the withdrawal of the Abrahamsons, persons other than Fleschner, Becker and Ehrlich were general partners of FBA.

14. At all times the general partners of FBA were authorized under the partnership agreement to invest its capital in securities of any kind or nature of any person, corporation, government or entity, including securities the resale of which was restricted.

15. FBA first invested in securities the resale of which was restricted in January, 1967.

16. For the period from April, 1966 to July 1966 FBA distributed a list of securities in which it held positions. The report for July, 1966 stated, "we will no longer distribute a list of our positions, but will be happy to discuss our securities with you on the telephone." Plaintiffs received a copy of that report. Marjorie and Robert Abrahamson assert that thereafter and prior to September 30, 1969 they never discussed the partnership's security holdings with any general partner or other representative of FBA.

17. The agreement of limited partnership, dated July 1, 1965, declared that the partnership was being formed

> for the purpose of investing and reinvesting in and holding stocks, bonds and other securities and investments of every kind and character. . . .

18. The power of the general partner of FBA under the agreement of limited partnership included the power, among others, to

> purchase, hold and sell stocks, bonds and other securities. . . .

The same power was delegated by the limited partners in the April 1, 1966 revision of the partnership agreement.

19. Article Ninth of the April 1, 1966 revision of the agreement of limited partnership, read and signed by the Abrahamsons, contained the provision:

> Appropriate books of accounts shall be kept, and each Partner whether limited or General, shall have access to all books, records, and accounts of the Partnership.

20. On October 1, 1968 a new revision of the agreement of limited partnership was signed making some changes in the terms of the FBA limited partnership, including the addition of new partners. Section 1.04 of this agreement indicated that the partnership was organized

> (a) to invest and trade, on margin or otherwise, in capital stock, preorganization certificates and subscriptions, warrants, bonds, notes, debentures, whether subordinated, convertible or otherwise, trust receipts and other securities of whatever kind or nature of any person, corporation, government or entity, and rights and options relating thereto, including put and call options written by the partnership or by others, and in commodities and commodity contracts . . .
>
> (b) to engage in such other businesses, activities and transactions as the Managing Partners may from time to time determine . . . .

Section 2.02 gives the Managing Partners power "to carry out any and all of the objects and purposes of the Partnership set forth in section 1.04 . . . ."

Dated: New York, New York

January 25, 1974

Yours, etc.

SULLIVAN & CROMWELL

RICHARD E. CARLTON

By_____
A Member of the Firm
Attorneys for Defendants
William J. Becker, Malcolm K. Fleschner and Fleschner Becker Associates
48 Wall Street
New York, New York 10005
(212) 952-8100

Defendant Becker's Affidavit in Support of Defendants' Motion for Summary Judgment

[Conformed Copy]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, et al.,

Defendants.

71 Civ. 344 (RLC)

AFFIDAVIT

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM J. BECKER, being duly sworn, deposes and says:

1. I reside at 4 Argyle Court, Livingston, New Jersey.

2. I have been, since April 1, 1966, a general partner of Fleschner Becker Associates ("FBA") and at certain times, as trustee under a certain agreement, a limited partner.

3. Attached as Exhibit A is a true copy of the July 1, 1965 Agreement of Limited Partnership of FBA, organized at that time under the name The Fleschner Company.

4. Attached as Exhibit B is a true copy of the April 1, 1966 Agreement of Limited Partnership which revises the original Agreement of Limited Partnership.

5. Attached as Exhibit C is a true copy of the October 1, 1968 Agreement of Limited Partnership which effects further revisions in the partnership agreement.

6. Attached as Exhibit D is a true copy of a report sent to all FBA partners setting forth the FBA investment performance from April 1, 1966 through July 31, 1966. The report advised the partners that future monthly reports would not thereafter include a list of securities in which FBA held positions but that the FBA management would "be happy to discuss our securities with you on the telephone." Neither plaintiff ever accepted this invitation to inquire about the holdings of FBA, at least before September 30, 1969.

7. FBA as a partnership entity has never rendered investment advisory services to any individual or firm for compensation of any kind.

/s/ William J. Becker
William J. Becker

Sworn to before me this
9th day of January, 1974.

/s/ Alan Ihne
Notary Public

ALAN IHNE
NOTARY PUBLIC, State of New York
Residing in Kings County
Kings Co. Clk's No. 24-7031350
Certificate Filed in
New York Co. Clk's
Commission expires March 30, 1974

[Seal of notary public affixed]

Attached as Exhibits

Exhibit A - July 1, 1965 Agreement of Limited Partnership of The Fleschner Company.

Exhibit B - April 1, 1966 Agreement of Limited Partnership of Fleschner Becker Associates.

Exhibit C - October 1, 1968 Agreement of Limited Partnership of Fleschner Becker Associates.

Exhibit D - Report to FBA partners dated April 1, 1966 - July 31, 1966.

Exhibit A to Becker Affidavit (Limited Partnership Agreement of July 1, 1965)

AGREEMENT OF LIMITED PARTNERSHIP of THE FLESCHNER CO., dated as of July 1, 1965, between Malcolm K. Fleschner, of Westport, Connecticut, General Partner, and Marjorie Abrahamson of Stamford, Connecticut, Robert Abrahamson of Stamford, Connecticut, Rita Caine of Great Neck, New York, Charles Fleschner of Neponsit, New York, Janice Fleschner of Westport, Connecticut, Susan Fleschner of New York, New York, Andrew K. Fleschner of Westport, Connecticut and Luise R. Greenstein of Sarasota, Florida, all Limited Partners.

WHEREAS, it is desired that the parties hereto form a Limited Partnership for the purpose of investing and reinvesting in and holding stocks, bonds and other securities and investments of every kind and character, including grain and other commodities, and to be conducted in accordance with the statutes and laws of the State of Connecticut relating to limited partnerships.

NOW, THEREFORE, the parties hereto agree that the Agreement of Limited Partnership shall read as follows:

ARTICLE FIRST

General

The Partnership or firm name shall be "The Fleschner Co.".

The Partnership shall continue under the provisions of these Articles from and after July 1, 1965, to and including December 31, 1965, and from year to year thereafter; provided, however, that the Partnership shall be terminated upon the death or incapacity of the General Partner and may be terminated at any time, notwithstanding the foregoing, at the election of the General Partner, such election to be made by the General Partner by written notice given by the General Partner to all of the other partners at least thirty (30) days prior to the date fixed in such notice as the date upon which such termination will take effect.

The term "majority in interest of the Partners", when used throughout these Articles shall mean any number of partners who at the time hold more than 50% of the aggregate of all Capital Accounts of the Partnership at July 1, 1965 or at the beginning of any calendar year thereafter, as the case may be, as hereinafter provided in Article SECOND and Article NINTH.

The principal place of business of the Partnership is 8 Stony Point Road, Westport, Connecticut. The Partnership may also maintain offices in such other places as may be from time to time determined by the General Partner.

ARTICLE SECOND

Capital

General capital as of the opening of business on July 1, 1965, contributed by and credited to the General

Partner, shall be in the amount specified in Part 1 of the schedule attached hereto (hereinafter referred to as the "Schedule"). In addition to the foregoing contribution of general capital, the General Partner may at his election and at any time make additional contributions to general capital either in the form of cash or in the form of securities or other consideration.

Limited capital as of the opening of business on July 1, 1965, contributed by and credited to the Limited Partners shall be as set forth in Part 2 of the Schedule which amounts shall reflect the charge or charges of a nature referred to in the last sentence of this paragraph. In addition to the foregoing contributions of limited capital, each Limited Partner may at his election and at any time, with the consent of the General Partner, make additional contributions to his limited capital. Such additional contributions to limited capital may be in cash, subject, at the discretion of the General Partner, to a charge of not more than two (2) per cent, or, may be in securities or other consideration subject, at the discretion of the General Partner, to such charge as the General Partner may determine.

No Partner, Limited or General, shall have the right to assign all or any portion of his interest as a Partner.

ARTICLE THIRD

Powers and Duties of Partners

The General Partner shall devote his best efforts to the Partnership business and shall diligently and faithfully employ himself therein.

The General Partner shall have the power among other things, on behalf of the Partnership: (a) to purchase, hold and sell stocks, bonds and other securities; (b) to sell stocks, bonds and other securities short and to cover such sales; (c) to purchase, hold, sell and otherwise deal in put and call options and any combination or combinations thereof; (d) to purchase, hold, sell, sell short and cover, and borrow from brokers for that purpose, commodity contracts and to purchase, hold, sell and otherwise deal in commodities generally dealt in on commodity or produce exchanges, provided, however, that Partnership funds used for the purpose of dealing in commodities and commodity contracts shall not exceed at the time of any purchase or commitment ten (10) per cent of the net worth of the Partnership at July 1, 1965 or at the beginning of any calendar year thereafter, as the case may be; (e) to conduct margin accounts with brokers; (f) to open, maintain and close bank accounts; (g) to sign checks; (h) to pledge securities for loans; (i) to engage in the business of advising and counselling on investments and to enter into agreements therefor; and (j) generally,

to act for the Partnership in all matters incidental to the foregoing.

The Partnership may lend money to any of the Partners, at the discretion of, and on such terms and conditions as may be fixed by the General Partner; provided, however, that no such loan shall exceed ten (10) per cent of the Capital Account of the Partner making the borrowing at July 1, 1965 or at the beginning of the calendar year in which such loan is made, as the case may be; and provided further, that no such loan shall extend beyond the end of the calendar year in which it shall have been made.

No Partner shall be liable for honest mistakes in judgment or for losses due to such mistakes or for losses due to the negligence of employees, brokers or other agents of the Partnership.

No Limited Partner shall be liable for any debts or obligations of the Partnership in excess of the amount of his distributive interest in the Partnership determined as provided in Article FIFTH.

ARTICLE FOURTH

Profits, Gains and Losses

For the purposes of these Articles, the "net profits" of the Partnership for any period shall mean the balance remaining after deducting from the total income of

the Partnership for such period all expenses and losses of the business for such period and the "net losses" of the Partnership for any period shall mean the amount by which the total income of the Partnership for such period is exceeded by all expenses and losses of the business for such period, expenses and losses, in both instances, to include (1) interest paid upon amounts not withdrawn by the Partners as provided in Article EIGHTH, (2) all amounts, if any, paid during such period as bonuses or additional compensation for such period to employees, and (3) all reserves, if any,created during such period against contingent or unliquidated liabilities and losses. In computing net profits and net losses of the Partnership for purposes of this Article, there shall be excluded any realized capital gains and any realized capital losses.

The net profits of the Partnership for the period ended December 31, 1965 and for each calendar year thereafter shall be distributed in the following manner: (a) twenty (20) per cent thereof shall be credited to the Capital Account of the General Partner and (b) the remaining eighty (80) per cent thereof shall be credited to the Capital Account of each of the Partners in proportion and in accordance with the Capital Account of each at July 1, 1965 or at the beginning of each calendar year thereafter, as the case may be.

The net losses of the Partnership for the period ending December 31, 1965 or for any calendar year thereafter, and any losses arising from any transaction during any such year but determined in a subsequent year, shall be borne by all of the Partners in proportion to the Capital Account of each at July 1, 1965 or at the beginning of each calendar year thereafter, as the case may be.

For the purposes of these Articles, the "realized net capital gains" of the Partnership for any period shall mean the excess of realized capital gains over realized capital losses of the Partnership for such period and the "realized net capital losses" of the Partnership for any period shall mean the excess of any realized capital losses over realized capital gains. In computing the realized net capital gains and realized net capital losses of the Partnership for the purposes of this Article there shall be no reduction for any net losses of the Partnership.

The realized net capital gains of the Partnership for the period ending December 31, 1965, or for any calendar year thereafter shall be borne in the manner in which net profits of the Partnership are shared as provided in this Article.

The realized net capital losses of the Partnership for the period ending December 31, 1965, or for any calendar year thereafter shall be borne in the manner in which net losses of the Partnership are shared as provided in this Article.

ARTICLE FIFTH

Ascertainment of Distributive Interests

A Limited Partner's distributive interest shall be the amount of his Capital Account standing to his credit upon the books of the Partnership at the end of the calendar year in which such Partner has withdrawn or at the date of termination of the Partnership, as the case may be, less an amount equal to twenty (20) per cent of the unrealized net capital gains, if any, reflected in such Capital Account. The General Partner's distributive interest at the date of termination of the Partnership shall be an amount equal to the net worth of the Partnership determined in accordance with Article NINTH less an amount equal to the aggregate of the distributive interests of all Limited Partners.

For the purpose of determining the distributive interest of any withdrawing Limited Partner, his share of net profits or net losses and of realized and unrealized net capital gains and of realized and unrealized net capital losses of the Partnership shall be computed as though his withdrawal had taken place at the end of the calendar year in which such withdrawal actually took place and his interest in the Partnership, except as otherwise provided in Article SEVENTH, shall not terminate until the end of the calendar year.

If there are any assets which, in the judgment of the General Partner, or, in the event of his death or incapacity, a majority in interest of the Partners, cannot be properly valued until sold or realized upon, and which cannot be sold without sacrificing the same and which cannot be properly distributed in kind, then any such assets may be excluded from the valuation of assets as provided in this Article and may be retained in the Partnership or in the liquidation of the Partnership; and the interest of each withdrawn Partner therein shall not be payable or distributed until such time as the General Partner or a majority in interest of the Partners (as the case may be) shall determine anything hereinbefore to the contrary notwithstanding.

If there is any pending transaction or claim by or against the Partnership, of which the interest or obligation of a withdrawn Partner therein cannot, in the judgment of the General Partner or in the event of his death or incapacity a majority in interest of the Partners be then ascertained, the value thereof or probable loss therefrom may be likewise excluded from such valuation or computation of such liabilities, and no amount shall be paid or charged to any such Partner or his personal representatives on account of any such transaction or claim until its final liquidation or such earlier time as the General Partner or a majority in interest of the Partners (as the case may be)

shall determine; the Partnership may, however, meanwhile retain from other sums due such Partner or his personal representatives an amount which the General Partner or a majority in interest of the Partners (as the case may be) estimate may be sufficient to cover the share of such Partner in any probable loss or liability on account of such transaction or claim.

ARTICLE SIXTH

Distributions to Partners

Upon the withdrawal (as defined in Article SEVENTH) of a Limited Partner or upon the termination of the Partnership, each withdrawing Partner, or each Partner, as the case may be, shall be paid his respective distributive interest in cash or kind or partly in cash and partly in kind as the General Partner or, in the event of his death or incapacity, as a majority in interest of the Partners, shall determine. At the discretion of the General Partner, a withdrawing Partner's distributive interest, determined in accordance with Article FIFTH, shall be subject to a charge of not more than two (2) per cent of the amount thereof.

The distributive interest of a withdrawing Partner shall be paid on or before the 31st day of March following the end of the year during which such Partner shall have withdrawn.

ARTICLE SEVENTH

Withdrawals

The term "withdrawal" of a Limited Partner throughout these Articles shall include withdrawal as a result of death, expulsion, incapacity, or voluntary retirement, or for any other reason (other than termination of the Partnership), unless otherwise specifically indicated. Withdrawal of a Limited Partner as a result of death, expulsion, incapacity or voluntary retirement, or for any other reason, unless otherwise specifically indicated, shall not occur, for purposes of computing his distributive interest pursuant to Article FIFTH, until the end of the calendar year in which such event shall have taken place but for all other purposes of these Articles such withdrawal shall be deemed to have occurred on the date upon which notice or knowledge thereof is received at the principal place of business of the Partnership as stated in these Articles (in the case of death, incapacity or other reason) or on the date upon which such event (in the case of expulsion or voluntary retirement) occurs.

The withdrawal of a Limited Partner shall not of itself terminate or dissolve the Partnership.

Upon the withdrawal of a Limited Partner, all of his rights in specific Partnership property of every kind whatsoever, including all books of account, records, and papers of the Partnership, shall immediately, and without

further assignment, pass to, and become vested in, the remaining or surviving Partners, and such withdrawn Limited Partner or his legal representatives shall have only the right to receive the distributions to withdrawn Partners provided for in Article FIFTH.

Neither a withdrawn Limited Partner nor his personal representatives shall have any voice in the management or control of the business after the date of his withdrawal, but shall have such access to the books of the Partnership to such extent, and be entitled to such data, as may be necessary to give full information with respect to his distributive interest, such right to continue only until his distributive interest shall have been determined as hereinafter provided.

A majority in interest of the Partners may at any time give notice in writing to each of the other Partners requiring that any Limited Partner shall withdraw from the Partnership upon a date specified in such notice, which date, however, shall not be less than two (2) days after the date on which such notice is given. Upon the date thus specified in said notice, the Limited Partner thus designated in such notice shall be deemed to have withdrawn from the Partnership without any further action either on the part of said Partner or of any other Partner, and thereafter his interest in the Partnership shall be treated in

the same manner as the interest of a withdrawn Partner, and he shall have only the rights of a withdrawn Partner.

If at December 31, 1965 or at the end of any calendar year thereafter the Capital Account of any Limited Partner shall be less than one (1) per cent of the total Capital Accounts of all of the Partners then said Partner shall be deemed to have withdrawn from the Partnership without any further action on the part of said Partner or of any other Partner, and thereafter his interest in the Partnership shall be treated in the same manner as the interest of a withdrawn Partner, and he shall have only the rights of a withdrawn Partner.

Any Limited Partner desiring to withdraw from the Partnership may do so only upon written notice given by such Limited Partner to the Partnership at least sixty (60) days prior to the date fixed in such notice as the day upon which he shall withdraw (except as otherwise provided in this Article SEVENTH and Article FIFTH) from the Partnership; provided, however, that the General Partner may, in his discretion, waive such notice requirement.

ARTICLE EIGHTH

Partner Drawings

Any Partner may withdraw all or any part of his interest in the Partnership; provided, however, that no such withdrawal may take place, except as otherwise provided

in this Article EIGHTH, at any time other than the end of any calendar year. In the event any Partner shall elect to withdraw all or any part of his Capital Account, such withdrawal, except as otherwise provided in this Article EIGHTH, may, in the discretion of the General Partner, be subject to a charge of two (2) per cent of the amount withdrawn.

Any Partner withdrawing all or any part of his Capital Account as hereinabove provided, except as otherwise provided in this Article EIGHTH, shall give at least sixty (60) days notice in writing to the Partnership of his intention to make such withdrawal and the amount thereof.

Each Partner shall, at the end of each quarter of the calendar year, withdraw from his Capital Account an amount equal to four (4) per cent of his Capital Account at July 1, 1965 or at the beginning of the calendar year in which such withdrawal is made, as the case may be. Notwithstanding the foregoing, any Partner may elect to leave with the Partnership all or any part of the amount so required to be withdrawn, in which event such amount shall be treated as a loan to the Partnership and such Partner shall be credited with interest at such rate, not less than the prime rate then in effect, as the General Partner shall, in his sole discretion, determine on the amount so loaned, such crediting to be made at the end of the calendar year. Any Partner who has elected not to withdraw any such amounts may at any

time or from time to time thereafter within the same cal -dar year withdraw all or any part of such funds so left together with interest to the date of such withdrawal.

The General Partner may, in addition, withdraw from his Capital Account at the end of each quarter an additional amount equal to one (1) per cent of the total Capital Accounts of all Partners at July 1, 1965 or at the beginning of any calendar year thereafter, as the case may be. In the event the General Partner elects not to withdraw all or any portion of such amount at the end of any quarter he may withdraw it at the end of any succeeding quarter within the same calendar year. Amounts not withdrawn by the General Partner shall not bear any interest.

All withdrawals made pursuant to this Article EIGHTH shall be debited to the respective Partners' Capital Accounts as at the end of the calendar year in which such withdrawals were made.

ARTICLE NINTH

General Accounting Provisions

Appropriate books of account shall be kept, and each Partner, whether Limited or General, shall have access to all books, records, and accounts of the Partnership.

The accounts of the Partnership shall be ascertained and determined as of the close of business on December thirty-first of each year or as of the close of business on the date

of termination of the Partnership at which time the books of account of the Partnership shall be closed and at which time an appropriate statement of net worth of the Partnership and an appropriate statement reflecting the Capital Accounts of the Partners, determined as in this Article and Article FOURTH provided, shall be prepared.

The Capital Account of each Partner standing to his credit upon the books of the Partnership at the beginning of the calendar year shall be credited with all capital contributions since that time, including capital contributions and interest resulting from Article EIGHTH and shall be debited with any withdrawals of capital since that time, including withdrawals pursuant to Article EIGHTH. Each Partner's Capital Account shall be further credited and debited to reflect his share of net profits or net losses and realized net capital gains or realized net capital losses, all as determined in accordance with the provisions of Article FOURTH and if the Capital Account of the General Partner be insufficient to pay the amount of his share of the losses, he shall pay an amount equal to such insufficiency in cash to the Partnership. Each Partner's Capital Account shall be further credited or debited to reflect his share of unrealized net capital gains or unrealized net capital losses, as if such gains and losses had been realized as at the end of the calendar year; provided, however, that

the provisions of Article FOURTH insofar as they relate to the sharing of realized net capital gains on a 20%-80% basis as between the General Partner and all Partners shall not apply for purposes of this Article and unrealized net capital gains shall be attributed to each Partner in proportion to and in accordance with his Capital Account at July 1, 1965 or at the beginning of each calendar year thereafter, as the case may be.

Except with respect to the distributive interests of withdrawn Partners determined in accordance with the provisions of Article FIFTH, the accounts of the Partnership, as ascertained and determined as of the end of each calendar year, shall be conclusive upon each Partner unless he shall make objection to the same in writing, delivered to the Partnership within sixty (60) days after the close of the year for which such account is made, and, in the absence of such written objection, the correctness of such account shall not thereafter be questioned by any Partner or by his legal representatives.

Except as otherwise expressly provided in these Articles, in determining the accounts of the Partnership for all purposes, the assets and liabilities of the Partnership may be taken at such valuations as the General Partner shall determine, and the Partnership may, but shall not be required to, set up reserves against doubtful accounts and contingent and unliquidated liabilities,

including the indebtedness of any Partner to the Partnership.

In the event the General Partner or any Limited Partner shall contribute securities or other property to the Partnership, the gain or loss with respect to such securities or other property shall be shared among the Partners so as to take account of the variation between the basis of such securities or other property to the Partnership and its fair market value at the time of contribution, it being understood that the Partner so contributing such securities or other property shall have attributed to him an amount equal to the entire difference between the basis thereof to the Partnership and its fair market value at the time of contribution when any such securities or other property are sold or realized upon by the Partnership, notwithstanding the fact that the Partnership may not have realized such entire difference.

In the event that the distributive interest of any withdrawing Limited Partner shall reflect an amount attributable to the unrealized net capital gains of the Partnership, such withdrawing Limited Partner shall have attributed to him, in addition to any amounts attributed to him by virtue of his share of realized net capital gains of the Partnership for the year in which he shall have withdrawn, an amount of the gross realized long-term capital gains of the

Partnership for such year equal to the amount of such unrealized net capital gains. In the event that any amount is attributed to any withdrawing Limited Partner pursuant to the preceding sentence, the amount of the realized long-term capital gains of the Partnership attributable to the remaining Partners shall be adjusted accordingly, it being understood that the realized net long-term capital gains or realized net long-term capital losses of the Partnership, as adjusted to exclude the amount attributable to such withdrawing Partner, shall be attributed to the remaining Partners in the manner in which realized net capital gains or realized net capital losses, as the case may be, are borne pursuant to Article FOURTH hereof.

ARTICLE TENTH

Dissolution and Liquidation

If the Partnership is terminated as provided in Article FIRST, then the property, assets and business of the Partnership shall, unless the limited capital contributions shall then be impaired, be liquidated by such persons as liquidators as may be designated by the General Partner or, in the event of his death or incapacity, by a majority in interest of the Partners; if the limited capital contributions shall then be impaired, the Limited Partners, or a majority in interest of them, may as Limited Partners, at

their option, nominate one or more persons to act as the liquidators.

ARTICLE ELEVENTH

As To Firm Name

In the event of a continuation of the Partnership after the withdrawal of a Partner, the continuing Partnership shall have full ownership of, and full right to use, the firm name. At no time during the continuation of the Partnership shall any value ever be placed upon the firm name, or the right to its use, or to the good-will, if any attached thereto, either as between the Partners or for the purpose of determining any distributive interest of any withdrawn Partner in accordance with the provisions of Article FIFTH; nor shall the personal representatives of any deceased Partner have any right to claim any such value.

In the event of a termination and dissolution of the Partnership as above described, neither the firm name, nor the right to its use, nor the good-will, if any, shall be considered as an asset of said Partnership, and no valuation shall be put thereon for the purpose of liquidation or distribution, or for any other purpose whatsoever; nor shall any value ever be placed thereon as between the remaining or surviving Partners and any withdrawn Partner or the estate of any deceased Partner.

In the event of a termination and dissolution of the Partnership as above described, the firm name and all right to its use and the good-will, if any, attributable thereto shall revert to the General Partner or his personal representatives.

ARTICLE TWELFTH

Miscellaneous

One or more additional Partners, General and/or Limited, may be admitted at any time and from time to time, to membership in the Partnership upon the consent, in writing, of the General Partner. The capital contribution of each additional Partner admitted to the Partnership shall, in the sole discretion of the General Partner, be subject to a charge of not more than two (2) per cent in the case of cash contributions and in the case of contributions other than cash to such other charges as the General Partner may determine.

The fiscal year of the Partnership shall be the calendar year or, in the case of the period beginning July 1, 1965, until December 31, 1965.

In the event of any dispute or any disagreement of any nature whatsoever, related in any way to the Partnership, or having any connection therewith, or arising in any way out of the Partnership or its relationship among any of the Partners, or between any withdrawn Partner and the other or

continuing Partners, or between the executors, administrators, or personal representatives of any Partner and the other or continuing Partners, such dispute, disagreement or matter shall be decided by the General Partner or in the event of his death or incapacity by a majority in interest of the Partners, and such decision shall be conclusive and binding upon each of the Partners, withdrawn or otherwise, and upon the heirs, executors, administrators, personal representatives, and assigns of each of the Partners.

Each of the Partners covenants for himself, his heirs, executors, administrators and personal representatives that he will, at any time on demand after his withdrawal from the Partnership, contribute to any of his former Partners his proportionate share of any liability, judgment or cost of any kind (including the reasonable costs of the defense of any suit or action and any sums which may be paid in settlement thereof) that may be incurred by any of such former Partners on account of any matter or transaction occurring during the time he was a Partner; provided, however, that the amount of such contribution shall not, in the case of a former Limited Partner, exceed the amount of his distributive interest at the time he ceased to be a Limited Partner. Such proportionate share of liability, judgment or cost of any kind shall be determined from the Articles of Partnership as they existed at the time such matter or transaction occurred.

Each of the Partners covenants that neither he nor his heirs, executors, administrators, or personal representatives, nor any person or persons claiming through or under him, will file a bill for Partnership accounting, or otherwise proceed adversely in any way whatsoever against the other Partners or the Partnership, except for fraud.

Each of the parties hereto agrees that if any action shall be taken pursuant to these Articles by the required percentage in interest of the Partners (where that is required), even though such party may not have assented thereto, or may have objected thereto, he will nevertheless execute any such writing or instrument as may be necessary to carry out and perfect such action, including, without limitation, any certificate of limited partnership or amendment thereto, any instrument effecting or evidencing the withdrawal of a Partner and any amendment or supplement to these Articles.

Each party hereto hereby constitutes and appoints the General Partner as the true and lawful attorney-in-fact of such party with full power and authority to sign such party's name to any writing or instrument which such party is required to execute pursuant to this Article with the same force and effect as if such writing or instrument had been personally executed by such party. Such power of

attorney is coupled with an interest and shall continue in full force and effect notwithstanding the subsequent death or incapacity of such party.

This Agreement shall be binding upon and inure to the benefit of the legal representatives, heirs, assigns and distributees of each of the Partners.

This Agreement may be executed in more than one counterpart with the same effect as if the Partners executing the several counterparts had all executed the same counterpart.

Any written notice herein required to be given to the Partnership by any of the Partners shall be deemed to have been given if addressed to "The Fleschner Co.", and delivered at the principal office of the Partnership at 8 Stony Point Road, Westport, Connecticut.

Any written notice required to be given to a Partner shall be deemed to be given if addressed to such Partner at his last residence address known to the Partnership and deposited in the United States mails.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals as of July 1, 1965.

General Partner

Malcolm K. Fleschner

Malcolm K. Fleschner

Limited Partners

Marjorie Abrahamson

Marjorie Abrahamson

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Robert Abrahamson

Rita Caine

Charles Fleschner

Janice Fleschner

Susan Fleschner

Andrew K. Fleschner

Luise K. Greenstein

SCHEDULE

Part 1

ame of General Partner	General Capital consisting of Cash	and Property at Agreed Value	
alcolm K. Fleschner	$303,362.50	$200,000.00	2,100 shares of Common Stock, par value $1 per share, of Melville Shoe Corporation - $54,337.50 3,700 shares of Common Stock, par value $1 per share, of Sel-Rex Corporation - $49,025.00

Part 2

ame of Limited Partner	Limited Capital consisting of Cash	and Property at Agreed Value	
arjorie Abrahamson	$180,000.00	$180,000.00	----
obert Abrahamson	$150,000.00	$150,000.00	----
ita Caine	$136,262.50	$122,000.00	500 shares of Common Stock, par value $1 per share, of Melville Shoe Corporation - $12,937.50 100 shares of Common Stock, par value $1 per share, of Sel-Rex Corporation - $1,325.00
harles Fleschner	$151,237.50	$110,000.00	500 shares of Common Stock, par value $1 per share, of Melville Shoe Corporation - $12,937.50 250 shares of Common Stock, par value $33-1/3 per share, of American Telephone & Telegraph Company - $16,500.00 100 shares of Common Stock, par value $10 per share, of Eastman Kodak Company - $7,825.00 300 shares of Common Stock, par value $1 per share, of Sel-Rex Corporation - $3,975.00

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Name of Limited Partner	Limited Capital	consisting of Cash	and Property at Agreed Value
Janice Fleschner	$270,925.00	$200,000.00	1,000 shares of Common Stock, par value $1 per share, of Melville Shoe Corporation - $25,875.00 3,400 shares of Common Stock, par value $1 per share, of Sel-Rex Corporation - $45,050.00
Susan Fleschner	$ 24,150.00	$ 21,500.00	200 shares of Common Stock, par value $1 per share, of Sel-Rex Corporation - $2,650.00
Andrew K. Fleschner	$186,187.50	$160,000.00	500 shares of Common Stock, par value $1 per share, of Melville Shoe Corporation - $12,937.50 1,000 shares of Common Stock, par value $1 per share, of Sel-Rex Corporation - $13,250.00
Luise R. Greenstein	$165,525.00	$150,000.00	600 shares of Common Stock, par value $1 per share, of Melville Shoe Corporation - $15,525.00

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Exhibit B to Becker Affidavit (Limited Partnership Agreement of April 1, 1966)

[CONFORMED COPY]

AGREEMENT OF LIMITED PARTNERSHIP of FLESCHNER BECKER ASSOCIATES, dated as of April 1, 1966, between the undersigned parties hereto

WHEREAS, it is desired that William J. Becker become a General Partner and that certain other persons become Limited Partners of the Partnership formed pursuant to an Agreement of Limited Partnership dated as of July 1, 1965 under the name of The Fleschner Co., that the said Partnership formed as of July 1, 1965 to be conducted in accordance with the statutes and laws of the State of Connecticut relating to limited partnerships be hereafter conducted in accordance with the statutes and laws of the State of New York relating to limited partnerships, and that the said Agreement of Limited Partnership of The Fleschner Co. be further amended in certain respects and subject to the conditions stated in the next paragraph hereof;

NOW, THEREFORE, the parties hereto agree that the Agreement of Limited Partnership, dated as of July 1, 1965, is hereby amended as of April 1, 1966 to read as follows; but without modifying said Agreement of Limited Partnership dated as of July 1, 1965, insofar as it deals with relations between the parties thereto prior to April 1, 1966.

ARTICLE FIRST

GENERAL

The Partnership or firm name shall be "Fleschner Becker Associates".

The Partnership shall continue under the provisions of these Articles from and after April 1, 1966, to and including the last day of the current fiscal year, and from year to year thereafter; provided, however, that the Partnership shall be terminated upon the death or incapacity of all of the General Partners and may be terminated at any time, notwithstanding the foregoing, at the election of the Executive Committee, such election to be made by the Executive Committee by

written notice given by it to all of the partners at least thirty (30) days prior to the date fixed in such notice as the date upon which such termination will take effect.

The term "majority in interest of the Partners", when used throughout these Articles, shall mean any number of partners who at the time hold more than 50% of the aggregate of all Capital Accounts of the Partnership at April 1, 1966 or at the beginning of any fiscal year thereafter, as the case may be, as hereinafter provided in Article SECOND and Article NINTH.

This Agreement makes provision for certain determinations, decisions and actions with respect to this Agreement to be made or taken by the Executive Committee. Subject to the further provisions of this paragraph, the Executive Committee shall consist of Malcolm K. Fleschner and William J. Becker. Each of the Partners agrees that such determinations, decisions and actions made or taken by the Executive Committee shall be conclusive and absolutely binding upon the Partnership, the Partners and any retired Partners and their heirs, successors and assigns, and on the estate of any deceased Partners or any person claiming through them. In the event of the absence or the temporary inability to act of any one of the members of the Executive Committee at any time when the total membership shall consist of two persons, the other member may act in all matters in the same manner and to the same extent as all members might have acted. The members of the Executive Committee may add additional members from among the General Partners. In the event that the membership of the Executive Committee shall consist of more than two persons, any action authorized by a majority of the members of the Executive Committee shall constitute action of the Committee. Any member of the Executive Committee may act on behalf of the Committee and any instrument signed by any such member shall conclusively evidence his authority to act on behalf of the Committee.

The principal place of business of the Partnership is 330 Madison Avenue, New York, New York. The Partnership may also maintain offices in such other places as may be from time to time determined by the Executive Committee.

ARTICLE SECOND

Capital

A schedule designated "Capital Schedule No. 1 effective April 1, 1966" in which are set forth the names of the several Partners, and the capital, General or Limited, of each Partner, signed by the Executive Committee, is on file in the office of the Partnership in New York City and shall be deemed a part of this Agreement. In addition to the contribution of General Capital set forth in the aforesaid schedule, each of the General Partners may at his election and at any time make additional contributions to general capital either in the form of cash or in the form of securities; provided, however, that any such contributions shall be credited to the Capital Account of the contributing Partner only at the end of the fiscal year. In addition to the contributions of limited capital set forth in the aforesaid schedule, each Limited Partner may at his election and at any time, with the consent of the Executive Committee, make additional contributions to his limited capital; provided, however, that any such contributions shall be credited to the Capital Account of the contributing Partner only at the end of the fiscal year. Such additional contributions to limited capital may be in cash, subject, at the discretion of the Executive Committee, to a charge (uniformly applied with respect to all such additional contributions then being made) of not more than two (2) per cent, or, may be in securities subject, at the discretion of the Executive Committee, to such charge as the Executive Committee may determine.

Whenever any new Partner shall be admitted, and at the end of each fiscal year a revised Capital Schedule shall be prepared to give effect thereto, and each succeeding schedule shall be designated by a successive number and by the date as of which it becomes effective. Each revised Capital Schedule shall be signed by a majority of the Executive Committee and filed with the counterpart of this Agreement on file in the office of the Partnership in New York City and, when so designated, signed and filed, shall become a part of this Agreement and shall supersede all prior Capital Schedules. The term "Capital Account" of any Partner as used throughout this Agreement shall mean his capital as shown on the Capital Schedule then in effect.

A schedule designated "Profit Schedule No. 1 effective April 1, 1966" in which are set forth the names of the several General Partners and the proportions in which the General Partners shall share net profits and unrealized net capital gains, as provided in Article FOURTH and FIFTH, respectively, signed by the Executive Committee, is on file in the office of the Partnership in New York City and shall be deemed a part of this Agreement. Whenever any new General Partner shall be admitted, or at such other time as the Executive Committee may determine, a revised Profit Schedule shall be prepared, and each succeeding schedule shall be designated by a successive number and by the date as of which it becomes effective. Each revised Profit Schedule shall be signed by a majority of the Executive Committee (including any General Partner whose proportion may have been reduced) and filed with the counterpart of this Agreement on file in the office of the Partnership in New York City and, when so designated, signed and filed, shall become a part of this Agreement and shall supersede all prior Profit Schedules.

No Partner, Limited or General, shall have the right to assign all or any portion of his interest as a Partner.

ARTICLE THIRD

POWERS AND DUTIES OF PARTNERS

Each of the General Partners shall devote his best efforts to the Partnership business and shall diligently and faithfully employ himself therein.

Each member of the Executive Committee shall have the power, among other things, on behalf of the Partnership: (a) to purchase, hold and sell stocks, bonds and other securities; (b) to sell stocks, bonds and other securities short and to cover such sales; (c) to purchase, hold, write, sell and otherwise deal in put and call options and any combination or combinations thereof; (d) to purchase, hold, sell, sell short and cover, and borrow from brokers for that purpose, commodity contracts and to purchase, hold, sell and otherwise deal in commodities generally dealt in on commodity or produce exchanges, provided, however, that Partnership commitments with respect to com-

modities and commodity contracts shall not exceed at the time of any purchase or commitment ten (10) per cent of the net worth of the Partnership at April 1, 1966 or at the beginning of any fiscal year thereafter, as the case may be; (e) to borrow money, on a secured or unsecured basis, from banks, brokers or other persons; (f) to conduct margin accounts with brokers; (g) to open, maintain and close bank accounts; (h) to sign checks; (i) to pledge securities for loans; (j) to engage in the business of advising and counselling on investments and to enter into agreements therefor; and (k) generally, to act for the Partnership in all matters incidental to the foregoing.

The Partnership may lend money at an interest rate equal to one (1) per cent over the prime rate then in effect to any of the Partners, at the discretion of, and on such other terms and conditions as may be fixed by the Executive Committee; provided, however, that no such loan shall exceed ten (10) per cent of the Capital Account of the Partner making the borrowing; and provided further, that no such loan shall extend beyond the end of the fiscal year in which it shall have been made.

No Partner shall be liable for honest mistakes in judgment or for losses due to such mistakes or for losses due to the negligence of employees, brokers or other agents of the Partnership.

No Limited Partner shall be liable for any debts or obligations of the Partnership in excess of the amount of his distributive interest in the Partnership determined as provided in Article FIFTH.

ARTICLE FOURTH

PROFITS, GAINS AND LOSSES

For the purposes of these Articles, the "net profits" of the Partnership for any period shall mean the balance remaining after deducting from the total income of the Partnership for such period all expenses and losses of the business for such period and the "net losses" of the Partnership for any period shall mean the amount by which the total income of the Partnership for such period is exceeded by all expenses and losses of the business for such period, expenses and losses, in both instances, to include (1) interest paid upon amounts not withdrawn by the Partners as provided in Article EIGHTH, (2) all amounts,

if any, paid during such period as bonuses or additional compensation for such period to employees, and (3) all reserves, if any, created by the Executive Committee during such period against contingent or unliquidated liabilities and losses. In computing net profits and net losses of the Partnership for purposes of this Article, there shall be excluded any realized capital gains and any realized capital losses.

The net profits of the Partnership for the period ending on the last day of the current fiscal year and for each fiscal year thereafter shall be distributed in the following manner: (a) twenty (20) per cent thereof shall be credited to the Capital Account of each of the General Partners in proportion to and in accordance with the Profit Schedule then in effect, and (b) the remaining eighty (80) per cent thereof shall be credited to the Capital Accounts of the Partners in proportion to and in accordance with their respective Capital Accounts.

The net losses of the Partnership for the period ending on the last day of the current fiscal year and for each fiscal year thereafter, and any losses arising from any transaction during any such year but determined in a subsequent year, shall be borne by the Partners in proportion to their respective Capital Accounts.

For the purposes of these Articles, the "realized net capital gains" of the Partnership for any period shall mean the excess of realized capital gains over realized capital losses of the Partnership for such period and the "realized net capital losses" of the Partnership for any period shall mean the excess of any realized capital losses over realized capital gains. In computing the realized net capital gains and realized net capital losses of the Partnersip for the purposes of this Article there shall be no reduction for any net losses of the Partnership.

The realized net capital gains of the Partnership for the period ending on the last day of the current fiscal year, and for each fiscal year thereafter shall be shared in the manner in which net profits of the Partnership are shared as provided in this Article.

The realized net capital losses of the Partnership for the period ending on the last day of the current fiscal year and for each fiscal year thereafter shall be borne in the manner in which net losses of the Partnership are shared as provided in this Article.

ARTICLE FIFTH

Ascertainment of Distributive Interests

A Limited Partner's distributive interest shall be the amount of his Capital Account at the end of the fiscal year in which such Partner has withdrawn or at the date of termination of the Partnership, as the case may be, less an amount equal to twenty (20) per cent of the unrealized net capital gains, if any, reflected in such Capital Account. Each of the General Partner's distributive interest at the end of the fiscal year in which such Partner has withdrawn or at the date of termination of the Partnership shall be an amount equal to the amount determined by subtracting from the net worth of the Partnership determined in accordance with Article Ninth an amount equal to the aggregate of the distributive interests of all Limited Partners and the result so obtained shall be distributed in the following manner: (a) an amount equal to the unrealized net capital gains, if any, which has been deducted from the distributive interests of all of the Limited Partners in accordance with the preceding sentence shall be credited to each General Partner in proportion to and in accordance with the Profit Schedule then in effect and (b) the balance thereof shall be credited to each General Partner in accordance with their respective Capital Accounts.

For the purpose of determining the distributive interest of any withdrawing Partner, his share of net profits or net losses and of realized and unrealized net capital gains and of realized and unrealized net capital losses of the Partnership shall be computed as though his withdrawal had taken place at the end of the fiscal year in which such withdrawal actually took place and his interest in the Partnership, except as otherwise provided in Article Seventh, shall not terminate until the end of the fiscal year.

If there are any assets which, in the judgment of the Executive Committee, or, in the event of the death or incapacity of all of the members of the Executive Committee, a majority in interest of the Partners, cannot be properly valued until sold or realized upon, and which cannot be sold without sacrificing the same and which cannot be properly distributed in kind, then any such assets may be excluded from the valuation of assets as provided in this Article and may be retained in the Partnership or in the liquidation of the Partnership; and the

interest of each withdrawn Partner therein shall not be payable or distributed until such time as the Executive Committee or a majority in interest of the Partners (as the case may be) shall determine anything hereinbefore to the contrary notwithstanding.

If there is any pending transaction or claim by or against the Partnership, of which the interest or obligation of a withdrawn Partner therein cannot, in the judgment of the Executive Committee or, in the event of the death or incapacity of all of the members of the Executive Committee, a majority in interest of the Partners, be then ascertained, the value thereof or probable loss therefrom may be likewise excluded from such valuation or computation of such liabilities, and no amount shall be paid or charged to any such Partner or his personal representatives on account of any such transaction or claim until its final liquidation or such earlier time as the Executive Committee or a majority in interest of the Partners (as the case may be) shall determine; the Partnership may, however, meanwhile retain from other sums due such Partner or his personal representatives an amount which the Executive Committee or a majority in interest of the Partners (as the case may be) estimate may be sufficient to cover the share of such Partner in any probable loss or liability on account of such transaction or claim.

ARTICLE SIXTH

Distributions to Partners

Upon the withdrawal (as defined in Article Seventh) of a Partner or upon the termination of the Partnership, each withdrawing Partner, or each Partner, as the case may be, shall be paid his respective distributive interest in cash or in kind or partly in cash and partly in kind as the Executive Committee or, in the event of the death or incapacity of all of the members of the Executive Committee, as a majority in interest of the Partners, shall determine. At the discretion of the Executive Committee, a withdrawing Partner's distributive interest, determined in accordance with Article Fifth, shall be subject to a charge (uniformly applied with respect to all such distributive interests then being determined) of not more than two (2) per cent of the amount thereof.

The distributive interest of a withdrawing Partner shall be paid on or before the last day of the third month following the end of the fiscal year during which such Partner shall have withdrawn.

ARTICLE SEVENTH

Withdrawals

The term "withdrawal" of a Partner throughout these Articles shall include withdrawal as a result of death, expulsion, incapacity, or voluntary retirement, or for any other reason (other than termination of the Partnership), unless otherwise specifically indicated. Withdrawal of a Partner as a result of death, expulsion, incapacity or voluntary retirement, or for any other reason, unless otherwise specifically indicated, shall not occur, for purposes of computing his distributive interest pursuant to Article Fifth, until the end of the fiscal year in which such event shall have taken place but for all other purposes of these Articles such withdrawal shall be deemed to have occurred on the date upon which notice or knowledge thereof is received at the principal place of business of the Partnership as stated in these Articles (in the case of death, incapacity or other reason) or on the date upon which such event (in the case of expulsion or voluntary retirement) occurs.

The withdrawal of a Partner shall not of itself terminate or dissolve the Partnership.

Upon the withdrawal of a Partner, all of his rights in specific Partnership property of every kind whatsoever, including all books of account, records, and papers of the Partnership, shall immediately, and without further assignment, pass to, and become vested in, the remaining or surviving Partners, and such withdrawn Partner or his legal representatives shall have only the right to receive the distributions to withdrawn Partners provided for in Article Fifth.

Neither a withdrawn Partner nor his personal representatives shall have any voice in the management or control of the business after the date of his withdrawal, but shall have such access to the books of the Partnership to such extent, and be entitled to such data, as may be

necessary to give full information with respect to his distributive interest, such right to continue only until his distributive interest shall have been determined as hereinafter provided.

The Executive Committee may at any time give notice in writing to each of the other Partners requiring that any Partner shall withdraw from the Partnership upon a date specified in such notice, which date, however, shall not be less than two (2) days after the date on which such notice is given. Upon the date thus specified in said notice, the Partner thus designated in such notice shall be deemed to have withdrawn from the Partnership without any further action either on the part of said Partner or of any other Partner, and thereafter his interest in the Partnership shall be treated in the same manner as the interest of a withdrawn Partner, and he shall have only the rights of a withdrawn Partner.

Any Partner desiring to withdraw from the Partnership may do so only at the end of a fiscal year and then only upon written notice given by such Partner to the Partnership at least sixty (60) days prior to the end of such fiscal year (subject to the provisions of this Article SEVENTH and Article FIFTH); provided, however, that the Executive Committee may, in its discretion, waive such notice requirement.

ARTICLE EIGHTH

PARTNER DRAWINGS

Any Partner may withdraw all or any part of his interest in the Partnership; provided, however, that no such withdrawal may take place, except as otherwise provided in this Article EIGHTH, at any time other than the end of any fiscal year. In the event any Partner shall elect to withdraw all or any part of his Capital Account, such withdrawal, except as otherwise provided in this Article EIGHTH, may, in the discretion of the Executive Committee, be subject to a charge (uniformly applied with respect to all such amounts then being withdrawn) of two (2) per cent of the amount withdrawn.

Any Partner withdrawing all or any part of his Capital Account as hereinabove provided, except as otherwise provided in this Article

EIGHTH, shall give at least sixty (60) days notice in writing to the Partnership of his intention to make such withdrawal and the amount thereof; provided, however, that the Executive Committee may, in its discretion waive such notice requirement.

Each Partner shall, at the end of each quarter of the fiscal year, withdraw from his Capital Account an amount equal to four (4) per cent thereof. Notwithstanding the foregoing, any Partner may elect to leave with the Partnership all or any part of the amount so required to be withdrawn, in which event such amount shall be treated as a loan to the Partnership and such Partner shall be credited with interest at one-half (½) per cent over the prime rate then in effect on the amount so loaned, such crediting to be made at the end of the fiscal year. Any Partner who has elected not to withdraw any such amounts may at any time or from time to time thereafter within the same fiscal year withdraw all or any part of such funds so left together with interest to the date of such withdrawal.

All withdrawals made pursuant to this Article EIGHTH shall be debited to the respective Partners' Capital Accounts as at the end of the fiscal year in which such withdrawals were made.

ARTICLE NINTH

GENERAL ACCOUNTING PROVISIONS

Appropriate books of account shall be kept, and each Partner, whether Limited or General, shall have access to all books, records, and accounts of the Partnership.

The accounts of the Partnership shall be ascertained and determined as of the close of business on the last day of each fiscal year or as of the close of business on the date of termination of the Partnership at which time the books of account of the Partnership shall be closed and at which time an appropriate statement of net worth of the Partnership and an appropriate statement reflecting the Capital Accounts of the Partners, determined as in this Article and Article FOURTH provided, shall be prepared.

The Capital Account of each Partner shall be credited with all capital contributions, including capital contributions and interest resulting from Article Eighth and shall be debited with any withdrawals of capital, including withdrawals pursuant to Article Eighth. Each Partner's Capital Account shall be further credited and debited to reflect his share of net profits or net losses and realized net capital gains or realized net capital losses, all as determined in accordance with the provisions of Article Fourth and if the Capital Account of any of the General Partners be insufficient to pay the amount of his share of the losses, he shall pay an amount equal to such insufficiency in cash to the Partnership. Each Partner's Capital Account shall be further credited or debited to reflect his share of unrealized net capital gains or unrealized net capital losses, as if such gains and losses had been realized as at the end of the fiscal year; provided, however, that the provisions of Article Fourth insofar as they relate to the sharing of realized net capital gains on a 20%-80% basis as between the General Partners and all Partners shall not apply for purposes of this Article and unrealized net capital gains shall be attributed to the Partners in proportion to and in accordance with their respective Capital Accounts.

Except with respect to the distributive interests of withdrawn Partners determined in accordance with the provisions of Article Fifth, the accounts of the Partnership, as ascertained and determined as of the end of each fiscal year, shall be conclusive upon each Partner unless he shall make objection to the same in writing, delivered to the Partnership within sixty (60) days after receipt by the Partner of a statement of his account, and, in the absence of such written objection, the correctness of such account shall not thereafter be questioned by any Partner or by his legal representatives.

Except as otherwise expressly provided in these Articles, in determining the accounts of the Partnership for all purposes, the assets and liabilities of the Partnership may be taken at such valuations as the Executive Committee shall determine, and the Partnership may, but shall not be required to, set up reserves against doubtful accounts and contingent and unliquidated liabilities, including the indebtedness of any Partner to the Partnership.

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In the event any General Partner or any Limited Partner shall contribute securities or other property to the Partnership, the gain or loss with respect to such securities or other property shall be shared among the Partners so as to take account of the variation between the basis of such securities or other property to the Partnership and its fair market value at the time of contribution, it being understood that the Partner so contributing such securities or other property shall have attributed to him an amount equal to the entire difference between the basis thereof to the Partnership and its fair market value at the time of contribution when any such securities or other property are sold or realized upon by the Partnership, notwithstanding the fact that the Partnership may not have realized such entire difference.

If, as of the opening of business on April 1, 1966 (or if on any other date on which Partners shall be added to the Partnership and the Executive Committee shall determine, in its sole discretion, that the subsequent provisions of this paragraph shall apply), the Partnership shall, in the aggregate own securities or other property with a net fair market value greater or less than the aggregate net fair market value at the time such securities or other property were acquired by the Partnership (whether by contribution, purchase or otherwise), the gain or loss with respect to such securities or other property shall be shared among the Partners of the Partnership who were partners immediately prior to April 1, 1966 (or such other date, as the case may be), so as to take account of the variation between the fair market value of such securities or other property at the time of acquisition by the Partnership and its fair market value at April 1, 1966 (or such other date, as the case may be), it being understood that the Partners who were such immediately prior to April 1, 1966 (or such other date, as the case may be), shall have attributed to them an amount equal to the entire difference between the fair market value at the time of acquisition by the Partnership and its fair market value at April 1, 1966 (or such other date, as the case may be), when any such securities or other property are sold or realized upon by the Partnership, notwithstanding the fact that the Partnership may not have realized such entire difference.

In the event that the distributive interest of any withdrawing Partner shall reflect an amount attributable to the unrealized net capital gains of the Partnership, such withdrawing Partner shall have attributed to him, in addition to any amounts attributed to him by virtue of his share of realized net capital gains of the Partnership for the fiscal year in which he shall have withdrawn, an amount of the gross realized long-term capital gains of the Partnership, if any, for such year equal to the amount of such unrealized net capital gains. In the event that any amount is attributed to any withdrawing Partner pursuant to the preceding sentence, the amount of the realized long-term capital gains of the Partnership otherwise attributable to the remaining Partners shall be adjusted accordingly, it being understood that the realized net long-term capital gains of the Partnership attributed to such withdrawing Partner shall reduce the amounts otherwise attributable to the remaining Partners in the manner in which realized net capital losses are borne pursuant to Article FOURTH hereof.

ARTICLE TENTH

DISSOLUTION AND LIQUIDATION

If the Partnership is terminated as provided in Article FIRST, then the property, assets and business of the Partnership shall, unless the limited capital contributions shall then be impaired, be liquidated by such persons as liquidators as may be designated by the Executive Committee or, in the event of the death or incapacity of all of the members of the Executive Committee, by a majority in interest of the Partners; if the limited capital contributions shall then be impaired, the Limited Partners, or a majority in interest of them, may as Limited Partners, at their option, nominate one or more persons to act as the liquidators.

ARTICLE ELEVENTH

As To FIRM NAME

In the event of a continuation of the Partnership after the withdrawal of a Partner, the continuing Partnership shall have full ownership of, and full right to use, the firm name. At no time during the continuation of the Partnership shall any value ever be placed upon

the firm name, or the right to its use, or to the good-will, if any attached thereto, either as between the Partners or for the purpose of determining any distributive interest of any withdrawn Partner in accordance with the provisions of Article FIFTH; nor shall the personal representatives of any deceased Partner have any right to claim any such value.

In the event of a termination and dissolution of the Partnership as above described, neither the firm name, nor the right to its use, nor the good-will, if any, shall be considered as an asset of said Partnership, and no valuation shall be put thereon for the purpose of liquidation or distribution, or for any other purpose whatsoever; nor shall any value ever be placed thereon as between the remaining or surviving Partners and any withdrawn Partner or the estate of any deceased Partner.

ARTICLE TWELFTH

MISCELLANEOUS

One or more additional Partners, General and/or Limited, may, by executing a counterpart of this Agreement, be admitted at any time and from time to time, to membership in the Partnership upon the consent, in writing, of the Executive Committee, upon terms fixed by it, and after at least thirty (30) days' prior notice to all of the then existing Partners, and the provisions of this Agreement may be changed by the Executive Committee to give effect to the admission of such Partners and to such terms; provided, however, that no such change shall be retroactive. The capital contribution of each additional Partner admitted to the Partnership shall, in the sole discretion of the Executive Committee, be subject to a charge (uniformly applied with respect to all cash contributions then being made) of not more than two (2) per cent in the case of cash contributions and in the case of contributions other than cash to such other charges as the General Partner may determine.

The fiscal year of the Partnership shall be such period as the Executive Committee shall, in its sole discretion, determine.

In the event of any dispute or any disagreement of any nature whatsoever, related in any way to the Partnership, or having any connection therewith, or arising in any way out of the Partnership or its relationship among any of the Partners, or between any with-

drawn Partner and the other or continuing Partners, or between the executors, administrators, or personal representatives of any Partner and the other or continuing Partners, such dispute, disagreement or matter shall be decided by the Executive Committee or, in the event of the death or incapacity of all of the members of the Executive Committee, by a majority in interest of the Partners, and such decision shall be conclusive and binding upon each of the Partners, withdrawn or otherwise, and upon the heirs, executors, administrators, personal representatives, and assigns of each of the Partners.

Each of the Partners covenants for himself, his heirs, executors, administrators and personal representatives that he will, at any time on demand after his withdrawal from the Partnership, contribute to any of his former Partners his proportionate share of any liability, judgment or cost of any kind (including the reasonable costs of the defense of any suit or action and any sums which may be paid in settlement thereof) that may be incurred by any of such former Partners on account of any matter or transaction occurring during the time he was a Partner; provided, however, that the amount of such contribution shall not, in the case of a former Limited Partner, exceed his Capital Account at the time he ceased to be a Limited Partner. Such proportionate share of liability, judgment or cost of any kind shall be determined from the Articles of Partnership as they existed at the time such matter or transaction occurred.

Each of the Partners covenants that neither he nor his heirs, executors, administrators, or personal representatives, nor any person or persons claiming through or under him, will file a bill for Partnership accounting, or otherwise proceed adversely in any way whatsoever against the other Partners or the Partnership, except for fraud.

Each of the parties hereto agrees that if any action shall be taken pursuant to these Articles by the required percentage in interest of the Partners (where that is required), even though such party may not have assented thereto, or may have objected thereto, he will nevertheless execute any such writing or instrument as may be necessary to carry out and perfect such action, including, without limitation, any certificate of limited partnership or amendment thereto, any instrument effecting or evidencing the withdrawal of a Partner and any amendment or supplement to these Articles.

Each party hereto hereby constitutes and appoints each of the members of the Executive Committee as the true and lawful attorney-in-fact of such party with full power and authority to sign such party's name to any writing or instrument which such party is required to execute pursuant to this Article with the same force and effect as if such writing or instrument had been personally executed by such party. Such power of attorney is coupled with an interest and shall continue in full force and effect notwithstanding the subsequent death or incapacity of such party.

This Agreement shall be binding upon and inure to the benefit of the legal representatives, heirs, assigns and distributees of each of the Partners.

This Agreement may be executed in more than one counterpart with the same effect as if the Partners executing the several counterparts had all executed the same counterpart.

This Agreement may be amended by the Executive Committee, upon thirty (30) days' prior notice to each Partner, as to administrative or similar matters; provided, however, that no such amendment shall affect materially and adversely any Partner, including any change in any Partner's share of profits or loss of the Partnership.

Any written notice herein required to be given to the Partnership by any of the Partners shall be deemed to have been given if addressed to "Fleschner Becker Associates", and delivered at the principal office of the Partnership at 330 Madison Avenue, New York, New York 10017.

Any written notice required to be given to a Partner shall be deemed to be given if addressed to such Partner at his last residence address known to the Partnership and deposited in the United States mails.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals as of April 1, 1966.

Type of Partner	Date as of Which First Became a Partner	
General	July 1, 1965	MALCOLM K. FLESCHNER MALCOLM K. FLESCHNER
General	April 1, 1966	WILLIAM J. BECKER WILLIAM J. BECKER

Type of Partner	Date as of Which First Became a Partner	
Limited	July 1, 1965	MARJORIE ABRAHAMSON M[illegible]IE ABRAHAMSON
Limited	July 1, 1965	ROB[illegible]RT ABRAHAMSON ROBERT ABRAHAMSON
Limited	July 1, 1965	RITA F. CAINE RITA CAINE
Limited	July 1, 1965	CHARLES FLESCHNER CHARLES FLESCHNER
Limited	July 1, 1965	JANICE FLESCHNER JANICE FLESCHNER
Limited	July 1, 1965	SUSAN FLESCHNER SUSAN FLESCHNER
Limited	July 1, 1965	ANDREW K. FLESCHNER ANDREW K. FLESCHNER
Limited	July 1, 1965	LUISE R. GREENSTEIN LUISE R. GREENSTEIN
Limited	April 1, 1966	FREDERIC K. BECKER FREDERIC K. BECKER
Limited	April 1, 1966	MARY BECKER MARY BECKER
Limited	April 1, 1966	MARJORIE BECKER MARJORIE BECKER
Limited	April 1, 1966	ABBY LYNN CAINE ABBY LYNN CAINE
Limited	April 1, 1966	JAMES ELIASOPH JAMES ELIASOPH
Limited	April 1, 1966	JOAN ELIASOPH JOAN ELIASOPH

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Type of Partner	Date as of Which First Became a Partner	
Limited	April 1, 1966	ALAN J. GOLDEN ALAN J. GOLDEN
Limited	April 1, 1966	MARLENE LUPIN MARLENE LUPIN
Limited	April 1, 1966	MORRIS M. MESSING MORRIS M. MESSING
Limited	April 1, 1966	ABRAHAM J. MORRIS ABRAHAM J. MORRIS
Limited	April 1, 1966	BARBARA MORRIS BARBARA MORRIS
Limited	April 1, 1966	DORIS MORRIS DORIS MORRIS
Limited	April 1, 1966	MAX J. MORRIS MAX J. MORRIS
Limited	April 1, 1966	MOLLIE MORRIS MOLLIE MORRIS
Limited	April 1, 1966	ROBERT H. MORRIS ROBERT H. MORRIS
Limited	April 1, 1966	FRANK RUBINSTEIN FRANK RUBINSTEIN
Limited	April 1, 1966	TINA RUBINSTEIN TINA RUBINSTEIN
Limited	April 1, 1966	ARTHUR SONNENBLICK ARTHUR SONNENBLICK
Limited	April 1, 1966	RUTH SONNENBLICK RUTH SONNENBLICK
Limited	April 1, 1966	SUSAN SONNENBLICK SUSAN SONNENBLICK

Type of Partner	Date as of Which First Became a Partner	
Limited	April 1, 1966	FREDERIC K. BECKER, Trustee FREDERIC K. BECKER, as Trustee of separate trusts under instruments dated June 17, 1959, June 17, 1959, June 17, 1959 and March 9, 1961 for the benefit of James Andrew Becker, Laurie Jeanne Becker, Robert Kenneth Becker and Wendy Lee Becker, respectively.
Limited	April 1, 1966	WILLIAM J. BECKER, Trustee WILLIAM J. BECKER, as Trustee of separate trusts under instruments dated December 14, 1960, December 14, 1960 and February 13, 1964 for the benefit of Jeanne Morris, Jonathan Scott Morris and Jeffrey Taylor, respectively.
Limited	April 1, 1966	ARTHUR MORRIS ARTHUR MORRIS, as Trustee of separate trusts under instruments dated December 28, 1960, December 28, 1960 and December 28, 1961 for the benefit of Judyth Morris, Keith Scott Morris and Robin Morris, respectively.
Limited	April 1, 1966	LAWRENCE MORRIS LAWRENCE MORRIS, as Trustee of separate trusts under instruments dated December 28, 1960 and December 28, 1960 for the benefit of Eric Morris and Jeffrey Morris, respectively.
Limited	April 1, 1966	HOWARD D. TAYLOR HOWARD D. TAYLOR, as Trustee of separate trusts under instruments dated December 12, 1960, December 12, 1960, December 12, 1960 and December 13, 1961 for the benefit of James Andrew Becker, Laurie Jeanne Becker, Robert Kenneth Becker and Wendy Lee Becker, respectively.
Limited	April 1, 1966	BERNARD BORKS FRANK RUBINSTEIN BERNARD BORKS and FRANK RUBINSTEIN, a partnership.

Type of Partner	Date as of Which First Became a Partner	
Limited	April 1, 1966	BELLE SCHULTZ BELLE SCHULTZ

Exhibit C to Becker Affidavit (Limited Partnership Agreement of October 1, 1968)

[CONFORMED COPY]

AGREEMENT OF LIMITED PARTNERSHIP of FLESCHNER BECKER ASSOCIATES, revised as of October 1, 1968, between the undersigned (herein called the "Partners", which term shall include any persons hereafter admitted to the Partnership and shall exclude any persons who cease to be Partners)

WHEREAS, the Partners desire to continue the limited partnership initially formed as of July 1, 1965 (the "Partnership"), pursuant to the terms and provisions of this Agreement of Limited Partnership (the "Agreement") and in accordance with the statutes and laws of the State of New York relating to limited partnerships;

NOW, THEREFORE, the parties hereto agree that the Agreement of Limited Partnership, dated as of July 1, 1965, as amended as of April 1, 1966, is hereby further amended to read as follows; but without modifying said Agreement of Limited Partnership, insofar as it deals with relations between the parties thereto prior to October 1, 1968.

ARTICLE I

GENERAL PROVISIONS

1.01 *Partnership Name.* The name of the Partnership is Fleschner Becker Associates.

1.02 *Fiscal Year.* The fiscal year of the Partnership ("the fiscal year") shall end on September 30 or on such other date as the General Partners shall from time to time determine.

1.03 *Liability of Partners.* The names of all of the Partners and the amounts of their respective contributions to the Partnership ("Capital Contributions") shall be set forth in a schedule (the "Schedule"), which shall be filed with the records of the Partnership at the beginning of each fiscal year. Those Partners who are designated as General Partners (the "General Partners") and former General Partners shall have unlimited liability for the repayment and discharge of all debts and obligations of the Partnership attributable to any fiscal

year during which they are or were General Partners of the Partnership. Those Partners who are designated as Limited Partners (the "Limited Partners") and former Limited Partners shall be liable for the repayment and discharge of all debts and obligations of the Partnership attributable to any fiscal year during which they are or were Limited Partners of the Partnership only to the extent of their respective interests in the Partnership in the fiscal year to which any such debts and obligations are attributable and shall not otherwise have any liability in respect of the debts and obligations of the Partnership.

The Partners and all former Partners shall share all losses, liabilities or expenses suffered or incurred by virtue of the operation of the preceding paragraph in the proportions of their respective Partnership Percentages (determined as of the beginning of the fiscal year as provided in section 3.03 hereof) for the fiscal year to which any debts or obligations of the Partnership are attributable up to the limit of their respective interests in the Partnership for such fiscal year. The General Partners and all former General Partners shall share all losses, liabilities or expenses suffered or incurred by virtue of the operation of the preceding paragraph in excess of their respective interests in the Partnership in the fiscal year to which any debts or obligations are attributable in the proportions of their respective Participating Percentages for such fiscal year.

As used in this section 1.03, the term "interest in the Partnership" shall mean with respect to any fiscal year and with respect to each Partner (or former Partner) the Liquidating Share that such Partner (or former Partner) would have received (or in fact did receive) pursuant to the terms of section 6.03 on withdrawal from the Partnership as of the end of such fiscal year.

Notwithstanding any other provision in this Agreement, in no event shall any Limited Partner (or former Limited Partner) be obligated to make any additional contribution whatsoever to the Partnership, or have any liability for the repayment and discharge of the debts and obligations of the Partnership (apart from his interest in the Partnership) but a Limited Partner (or former Limited Partner) shall be required to repay any loan made to him by the Partnership pursuant to section 4.01.

1.04 *Purposes of Partnership.* The Partnership is organized for the following objects and purposes:

(a) to invest and trade, on margin or otherwise, in capital stock, preorganization certificates and subscriptions, warrants, bonds, notes, debentures, whether subordinated, convertible or otherwise, trust receipts and other securities of whatever kind or nature of any person, corporation, government or entity, in rights and options relating thereto, including put and call options written by the Partnership or by others, and in commodities and commodity contracts (all such items being called herein "Securities"), to sell Securities short and cover such sales, and to lend funds or properties of the Partnership either with or without security; and

(b) to engage in such other businesses, activities and transactions as the Managing Partners may from time to time determine;.

(c) to enter into, make and perform, all contracts and other undertakings, and engage in all activities and transactions, as the Managing Partners may deem necessary or advisable to the carrying out of the foregoing objects and purposes, including without limitation:

(i) to borrow or raise moneys, and, from time to time without limitation as to amount or manner and time of repayment, to issue, accept, endorse and execute promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of such or other obligations of the Partnership by mortgage upon, or hypothecation or pledge of, all or part of the property of the Partnership, whether at the time owned or thereafter acquired;

(ii) to maintain for the conduct of Partnership affairs one or more offices and in connection therewith rent or acquire office space, engage personnel, whether part-time or full time, and do such other acts as the Managing Partners may deem necessary or advisable in connection with the maintenance and administration of such office or offices;

(iii) to engage independent attorneys, accountants or such other persons as the Managing Partners may deem necessary or advisable.

1.05 *Assignability of Interest.* A Partner may not assign his interest in whole or in part to any person except by last will and testament or by operation of law and any such attempted assignment shall be void.

ARTICLE II

Management of Partnership

2.01 *Management Generally.* The management of the Partnership shall be vested exclusively in the General Partners or such of them as are from time to time designated as Managing Partners (the "Managing Partners") in a writing signed by the holders of 66⅔% of the Partnership Percentages of the General Partners and filed with the records of the Partnership. The Limited Partners shall have no part in the management of the Partnership, and shall have no authority or right to act on behalf of the Partnership in connection with any matter. Each Managing Partner shall be paid a salary of $25,000 per annum, which shall be treated for all purposes as an expense of the Partnership.

2.02 *Authority of Partners.* Each Managing Partner shall have the power by himself (except as hereinafter otherwise provided) on behalf and in the name of the Partnership to carry out any and all of the objects and purposes of the Partnership set forth in section 1.04, and to perform all acts and enter into and perform all contracts and other undertakings which he may deem necessary or advisable or incidental thereto, including without limitation, the power to:

(a) conduct accounts, including margin accounts, with brokers;

(b) open, maintain and close bank accounts and draw checks or other orders for the payment of moneys;

(c) lend, with or without security, any of the funds or properties of the Partnership and, from time to time without limit as to amount, borrow or raise funds and secure the payment of obligations of the Partnership by mortgage upon, or pledge or hypothecation of, all or any part of the property of the Partnership;

(d) do any and all acts on behalf of the Partnership, and exercise all rights of the Partnership, with respect to its interest in any person, firm, corporation or other entity; and

(c) act for and on behalf of the Partnership in all matters incidental to the foregoing.

2.03 *Reliance by Third Parties.* Persons dealing with the Partnership are entitled to rely conclusively upon the power and authority of each Managing Partner as herein set forth and upon the certificate of any General Partner to the effect that he is then acting as a Managing Partner.

2.04 *Activity of Managing Partners.* Each Managing Partner hereby agrees to use his best efforts in connection with the purposes and objects of the Partnership and to devote to such purposes and objects such of his time and activity as in his discretion shall be deemed necessary for the management of the affairs of the Partnership, provided, however, that nothing contained in this section 2.04 shall preclude any Managing Partner from acting, consistent with the foregoing, as a director, officer or employee of any corporation, a trustee of any trust, an executor or administrator of any estate, a partner of any partnership, or an administrative official of any other business entity, or from participating in profits derived from the investments of any such corporation, trust, estate, partnership or other business entity or person, or from engaging in any other business or having other business interests.

2.05 *Exculpation.* No General Partner shall be liable to any other Partner or the Partnership for honest mistakes of judgment or for losses due to such mistakes or to the negligence, dishonesty or bad faith of any employee, broker or other agent of the Partnership.

ARTICLE III

Capital Accounts of Partners

3.01 *Capital Contributions.* Each Partner has made a capital contribution to the Partnership in the amount set forth opposite such Partner's name on the Schedule. Additional contributions in cash and/or marketable Securities may be made by Partners only in accordance with the provisions of section 3.02. The Managing Partners may decline to accept any Securities tendered for contribution to the Partnership.

Each Partner who may make a cash contribution consents and agrees to pay to the Partnership, or, alternatively, to have deducted from such contribution, an amount, not exceeding 1% of such contribution, as the Managing Partners may determine to cover the costs of investing such cash. Each Partner who may contribute marketable Securities to the Partnership consents and agrees to pay to the Partnership, or, alternatively, to have deducted from the value of such Securities, an amount, not exceeding 2% of such value, as the Managing Partners may determine to cover the costs of selling such Securities and investing the proceeds.

Each Partner who has contributed or may contribute Securities to the Partnership, has or will prior to the date of any such contribution furnish to the Partnership evidence, satisfactory to the Managing Partners, as to his dates of acquisition of such Securities, his unencumbered ownership thereof and his adjusted basis thereof for income tax purposes. Any gain or loss realized by the Partnership from the sale of any contributed Securities shall for income tax purposes, be allocated between the contributing Partner and all of the Partners (including such contributing Partner) as follows:

(a) any such gain or loss attributable to the difference between the contributing Partner's adjusted basis for such Securities and the value thereof at the time of their contribution shall be allocated to such contributing Partner; and

(b) any such gain or loss attributable to the difference between the value of such Securities at the time of their contribution and the proceeds realized by the Partnership from the sale thereof shall be allocated among all of the Partners (including such contributing Partner) in accordance with the provisions of this Agreement relating to the determination of the Partners' respective interests in gains and losses from the purchase and sale of Securities.

3.02 *Opening Capital Accounts.* There shall be established for each Partner on the books of the Partnership as of the first day of each fiscal year an Opening Capital Account (the "Opening Capital Account") which for the fiscal year during which such Partner was admitted shall be an amount eqval to his Capital Contribution, and

which for each fiscal year thereafter shall be an amount equal to the Closing Capital Account of such Partner for the immediately preceding fiscal year plus the amount of any additional contributions made by such Partner.

Additional contributions of cash or marketable Securities, subject to the provisions of section 3.01, may be made by any Partner only as of the first day of any fiscal year of the Partnership and must be received by the Partnership no later than the first day of such fiscal year, provided the Partnership has received not less than 30 days' notice thereof specifying the amount and nature of the additional contribution. The Managing Partners shall have the right to accept or decline to accept any such additional contribution whether or not such notice is given.

3.03 *Participating and Partnership Percentages.* There shall be determined for each fiscal year the Participating Percentage of each General Partner and the Partnership Percentage of each Partner.

A Participating Percentage shall be determined for each General Partner for each fiscal year by the holders of 66⅔% of the Partnership Percentages of the General Partners for the immediately preceding fiscal year. The sum of the Participating Percentages shall equal 100 per cent. The Participating Percentages shall be set forth in a schedule which shall be signed by the holders of 66⅔% of the Partnership Percentages of the General Partners for the immediately preceding fiscal year and filed with the records of the Partnership.

A Partnership Percentage shall be determined for each Partner for each fiscal year of the Partnership by dividing the amount of each Partner's Opening Capital Account by the sum of the Opening Capital Accounts for such fiscal year. The sum of the Partnership Percentages shall equal 100 per cent. The Partnership Percentages shall be set forth in a schedule which shall be filed with the records of the Partnership within 90 days of the beginning of each fiscal year.

3.04 *Closing Capital Accounts.* At the end of each fiscal year the Closing Capital Account of each Partner shall be determined by

adjusting his Opening Capital Account for such fiscal year to reflect profits, gains and losses for such fiscal year in the following manner:

(a) Any Net Operating Profits shall be credited as follows: (i) 80% to the Opening Capital Accounts of all the Partners in the proportions of their respective Partnership Percentages; (ii) 20% to the Opening Capital Accounts of the General Partners in the proportions of their respective Participating Percentages;

(b) Any Net Operating Losses shall be debited against the Opening Capital Accounts of all the Partners in the proportions of their respective Partnership Percentages;

(c) Any Net Unrealized Capital Gains shall be credited to, or any Net Unrealized Capital Losses shall be debited against, the Opening Capital Accounts of all the Partners in the proportions of their respective Partnership Percentages;

(d) If there are Net Realized Capital Gains:

(i) 20% of the amount thereof shall be credited to the Opening Capital Accounts of the General Partners and shall be allocated among them in a manner to reflect their Participating Percentages in the years to which annual increments in value of the Securities were attributable, and 80% of the amount thereof shall be credited to the Opening Capital Accounts of all the Partners and shall be allocated among them in a manner to reflect the Partnership Percentages of the Partners in the years to which annual increments in value of the Securities were attributable;

(ii) The Opening Capital Accounts of all Partners shall be adjusted by an appropriate reversing entry to reflect the prior adjustment of the Opening Capital Accounts of the Partners for Net Unrealized Capital Gains or Net Unrealized Capital Losses attributable to prior fiscal years.

(e) If there are Net Realized Capital Losses, the Opening Capital Accounts of all Partners shall be adjusted, in the proportions of their respective Partnership Percentages, to reflect the difference between the amount realized upon the sale or purchase of each of the Securities sold or purchased during that year and the value of such Securities on the first day of that fiscal year, if such Securities were held by the Partnership on that day, or the

cost of such Securities, if such Securities were acquired by the Partnership after that day.

3.05 *Definitions.* For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "Net Operating Profits" shall, with respect to any fiscal year, mean the excess of aggregate income earned during such fiscal year by the Partnership from all sources whatever (other than net gain from the sale or purchase of Securities but including income derived from the sale of put and call options written by the Partnership) over all expenses incurred during such fiscal year by the Partnership (other than expenses directly relating or attributable to the sale or purchase of Securities but including expenses directly relating or attributable to the sale of put and call options written by the Partnership);

(b) the term "Net Operating Losses" shall, with respect to any fiscal year, mean the excess of the expenses incurred during such fiscal year by the Partnership (other than expenses directly relating or attributable to the sale or purchase of Securities but including expenses directly relating or attributable to the sale of put and call options written by the Partnership) over the aggregate income earned during such fiscal year by the Partnership from all sources whatsoever (other than net gain from the sale or purchase of Securities but including income derived from the sale of put and call options written by the Partnership);

(c) the term "Net Realized Capital Gains" shall, with respect to any fiscal year, mean the excess of the aggregate gains realized during such fiscal year by the Partnership from the sale or purchase of Securities (including distribution in kind) over the aggregate losses realized during such fiscal year by the Partnership from the sale or purchase of Securities;

(d) the term "Net Realized Capital Losses" shall, with respect to any fiscal year, mean the excess of the aggregate losses realized during such fiscal year by the Partnership from the sale or purchase of Securities over the aggregate gains realized during such fiscal year by the Partnership from the sale or purchase of Securities;

(e) the term "Net Unrealized Capital Gains" shall, with respect to any fiscal year, mean the excess of any aggregate increase

during such fiscal year in the value of Securities held at the end of such fiscal year over any aggregate decrease during such fiscal year in the value of Securities held at the end of such fiscal year.

(f) the term "Net Unrealized Capital Losses" shall, with respect to any fiscal year, mean the excess of any aggregate decrease during such fiscal year in the value of Securities held at the end of such fiscal year over any aggregate increase during such fiscal year in the value of Securities held at the end of such fiscal year.

As used in this Agreement the term "security position" means a "long" and/or "short" position and the phrase "sale or purchase of Securities" includes any transaction on which gain or loss is realized whether by sale of all or part of a long security position or by covering all or part of a short security position.

For purposes of determining the value of Securities, Securities which are listed on a national securities exchange shall be valued at their last sales prices on the date of determination, or, if no sales occurred on such day, at the mean between the "bid" and "asked" prices on such day. Securities which are not listed shall be valued at their last closing "bid" prices if held "long" by the Partnership and their last closing "asked" prices if held "short" by the Partnership. Securities which are in the form of put or call options shall be valued at their fair market value, and Securities which are commodities or commodity contracts shall be valued at their last prior sales prices. All other Securities and property shall be assigned such value as the Managing Partners may determine and such value, as well as all other values assigned to Securities by the Managing Partners pursuant to this paragraph of this section 3.05, shall be final and conclusive as to all of the Partners.

3.06 *Tax Accounting Method.* Gain or loss on transactions in Securities shall be recognized to Partners for Federal income tax purposes only to the extent such gains or losses are realized through a taxable purchase, sale or other disposition. For Federal income tax purposes Net Operating Profits, Net Operating Losses and gains and losses from transactions in Securities shall be allocated among the Partners in the manner set forth in section 3.04.

3.07 *Attribution of Net Unrealized Capital Gains.* In the event that the Liquidating Share of any withdrawing Partner shall reflect an amount attributable to the Net Unrealized Capital Gains of the Partnership, the Managing Partners may attribute to such withdrawing Partner, in addition to any amounts attributed to him by virtue of his share of realized net capital gains of the Partnership for the fiscal year in which he shall have withdrawn, an amount of the gross realized long-term capital gains of the Partnership, if any, for such year equal to the amount of such Net Unrealized Capital Gains. In the event that any amount is attributed to any withdrawing Partner pursuant to the preceding sentence, the amount of the realized long-term capital gains of the Partnership otherwise attributable to the remaining Partners shall be adjusted accordingly, it being understood that the realized net long-term capital gains of the Partnership attributed to such withdrawing Partner shall reduce the amounts otherwise attributable to the remaining Partners in a manner to reflect their respective Partnership Percentages.

3.08 *Determination by Managing Partners of Certain Matters.* All matters concerning the valuation of Securities, the allocation of profits, gains and losses among the Partners including the taxes thereon, and accounting procedures, not specifically and expressly provided for by the terms of this Agreement, shall be determined by the Managing Partners, whose determination shall be final and conclusive as to all of the Partners.

ARTICLE IV

Withdrawal of Capital

4.01 *Loans and Withdrawals in General.* No Partner shall be entitled to withdraw any amount from his capital account other than upon his withdrawal from the Partnership, death or insanity, except as provided in sections 4.02 and 4.03. The Partnership may, but shall not be required to, make loans to any General or Limited Partner, which do not mature beyond the end of the fiscal year in which they are made and which bear interest at a rate determined by the Manag-

ing Partners, provided, however, that the aggregate loans outstanding to any Partner in any fiscal year shall not exceed 25% of the Opening Capital Account of such Partner for such fiscal year.

4.02 *Withdrawals by Managing Partners.* The Managing Partners may withdraw from their respective capital accounts at any time or from time to time during a fiscal year such amounts as shall not exceed in the aggregate for all Managing Partners an amount equal to 10% of the total Opening Capital Accounts of all Partners at the beginning of the fiscal year, provided, however, that no such withdrawal shall be made if the sum of such payment and all previous payments to a Managing Partner pursuant to this section 4.02 for such fiscal year exceeds such Managing Partner's Opening Capital Account for such fiscal year.

4.03 *Additional Withdrawals.* Each Partner shall have the right at the end of any fiscal year to withdraw any amount out of his capital account upon 30 days' notice prior to the end of such year stating the amount to be withdrawn. Distribution of any amount withdrawn pursuant to this paragraph shall be made within 90 days after the end of the fiscal year.

Any withdrawal pursuant to this section 4.03 shall be subject to a charge not in excess of 2% of the amount thereof as the Managing Partners may determine to cover costs of selling Securities in order to effect payment of such withdrawal.

ARTICLE V

Admission of New Partners

5.01 *New Partners.* The Managing Partners may at the beginning of any fiscal year admit one or more new Partners subject only to the conditions that:

(a) each such new Partner shall execute a counterpart of this Agreement and thereby become bound by the terms and provisions hereof;

(b) each such new Partner, if he shall be admitted as a General Partner, shall have been approved in writing by the General Partners who, immediately prior to such admission, hold 66⅔% of the Partnership Percentages of all such General Partners.

Admission of a new Partner shall not be a cause for dissolution of the Partnership.

ARTICLE VI

Withdrawal, Death or Insanity of Partners

6.01 *Withdrawal, Death, etc. of General Partner.* A General Partner may, upon 60 days' prior notice, withdraw from the Partnership at the end of any fiscal year. The withdrawal, death or insanity of a General Partner shall dissolve the Partnership unless there are one or more remaining General Partners and the holders of 66⅔% of the Partnership Percentages of the remaining General Partners agree to continue the Partnership. In the event that there is no remaining General Partner the Partnership shall terminate and a majority in interest of the Limited Partners may select one or more persons to wind up the affairs of the Partnership and discharge the functions of the Managing Partners under section 7.02.

In the event of the death or insanity of a General Partner or the giving of notice of withdrawal by a General Partner, the interest of such General Partner shall continue at the risk of the Partnership business until the last day of the fiscal year in which such event takes place (herein called the "year of determination") or earlier termination of the Partnership. If the Partnership is continued after the expiration of the year of determination, such General Partner or his legal representatives shall be entitled to receive within 90 days of the end of such fiscal year, in accordance with section 6.03, the Liquidating Share of such General Partner as of the end of the year of determination. A General Partner who serves notice of withdrawal, dies, or becomes insane or his legal representatives shall have no right to take part in the management of the business and the interest or Partnership Percentage of such General Partner shall not be included in calculating 66⅔% of such interests of the Partners or General Partners, respectively, under this and other sections of this Agreement.

If a General Partner shall become disabled, and such disability shall continue for a period of six consecutive months, the holders of 66⅔% of the Partnership Percentages of the other General Partners may require such General Partner to withdraw from the Partnership as of the last day of the fiscal year in which the six month period shall expire. A General Partner required to withdraw pursuant to this paragraph shall be treated for all purposes and in all respects as a General Partner who withdraws involuntarily due to death or insanity.

For purposes of this section 6.01, a General Partner is "disabled" if because of disease or injury he is rendered unable to perform his duties as a General Partner or a Managing Partner under this Agreement.

6.02 *Withdrawal, Death, etc. of Limited Partner.* A Limited Partner may, upon 60 days' prior notice, withdraw from the Partnership at the end of any fiscal year of the Partnership. The withdrawal, death or insanity of a Limited Partner shall not dissolve the Partnership.

In the event of death or insanity of a Limited Partner or the giving of notice of withdrawal by a Limited Partner, the interest of such Limited Partner shall continue at the risk of the Partnership business until the last day of the fiscal year in which such event takes place (herein called the "year of determination") or earlier termination of the Partnership. If the Partnership is continued after the expiration of the year of determination, such Limited Partner or his legal representatives shall be entitled to receive within 90 days of the end of such fiscal year, in accordance with section 6.03, the Liquidating Share of such Limited Partner as of the end of the year of determination. The interest of a Limited Partner who serves notice of withdrawal, dies or becomes insane or his legal representatives shall not be included in calculating a majority in interest of the Limited Partners under this Agreement.

6.03 *Liquidating Share.* The Liquidating Share of a withdrawing, deceased or insane Partner shall be the Closing Capital Account of such Partner for the year of determination less 20% of the amount

of the aggregate net unrealized capital gains attributable to such Partner's Closing Capital Account.

The difference between the Closing Capital Account of any withdrawing, deceased or insane Partner and the Liquidating Share payable to such Partner shall be credited to the Closing Capital Accounts of the General Partners, including the withdrawing Partner if a General Partner, and shall be allocated among them in a manner to reflect the Participating Percentages of the General Partners in the years to which annual increments in value of the Securities were attributable.

The Liquidating Share shall be subject to a charge not in excess of 2% of the amount thereof as the Managing Partners may in their discretion determine.

6.04 *Liquidating Account of Former Managing Partners.* For the three fiscal years of the Partnership immediately following the year of withdrawal of a Managing Partner by reason of death or insanity, there shall be established a Liquidating Account for such former Managing Partner. At the end of each such fiscal year, there shall be credited to the Liquidating Account of such former Managing Partner a percentage of the amount of Net Realized Capital Gains for that year in accordance with Section 3.04(d)(ii) as if such former Managing Partner were a Managing Partner in that year except that the Participating Percentage of such former Managing Partner during each of such three fiscal years shall be 20% of his Participating Percentage in his year of withdrawal.

In the event that one or more Partners withdraw from the Partnership, or the Partnership is terminated in accordance with Section 7.01 during such three fiscal years, there shall be credited to the Liquidating Account of such former Managing Partner an amount equal to the amount which would have been credited to him under Section 6.03. The amount credited to such former Managing Partner's Liquidating Account shall be paid to such former Managing Partner or his legal representative within 90 days after the end of the fiscal year to which such amount was credited.

6.05 *Required Withdrawals.* The interest of any Limited Partner in the Partnership may be terminated as of the end of any fiscal year if determined by the Managing Partners to be in the best interests of the Partnership upon notice to that effect to such Partner at least 10 days prior to the end of such year. Such notice of termination shall have the same effect as a notice of withdrawal by such Partner pursuant to section 6.02 and the Limited Partner receiving such notice shall be treated for all purposes and in all respects as a Partner who has given notice of withdrawal.

ARTICLE VII

Duration and Termination of Partnership

7.01 *Duration.* The Partnership shall continue for a period of 10 years from the day and year first above written, unless sooner terminated pursuant to section 6.01 or, at any time, by decision of the Managing Partners. In the case of dissolution of the Partnership for any cause, whether or not specified in this Agreement, the Partnership business may be continued by the holders of 66⅔% of the Partnership Percentages of the General Partners.

7.02 *Termination.* On termination of the business of the Partnership, the Managing Partners shall, out of the Partnership assets, make distributions in the following manner and order:

(a) to payment and discharge of the claims of all creditors of the Partnership who are not Partners;

(b) to payment and discharge pro rata of the claims of all creditors of the Partnership who are Partners; and

(c) to the Partners in the relative proportions that their respective Liquidating Shares bear to each other.

7.03 *Method of Distributions.* Distributions made pursuant to subparagraphs (a) and (b) of section 7.02 shall be made solely in cash. All other distributions made pursuant to this Agreement shall be made in cash or marketable Securities or both, as the Managing Partners may in their discretion determine.

ARTICLE VIII

Reports to Partners

8.01 *Independent Auditors.* The books of account and records of the Partnership shall be audited as of the end of each fiscal year by independent certified public accountants selected by the Managing Partners.

8.02 *Reports to Current Partners.* After the end of each fiscal year, the Managing Partners shall cause the independent public accountants to prepare and shall mail to each Partner, a report setting forth as of the end of such fiscal year:

(a) a balance sheet of the Partnership;

(b) the Net Operating Profits or Net Operating Losses for such fiscal year;

(c) the Net Unrealized Capital Gains or Net Unrealized Capital Losses for such fiscal year;

(d) the Net Realized Capital Gains or Net Realized Capital Losses for such fiscal year;

(e) such Partner's Closing Capital Account; and

(f) such Partner's Partnership Percentage for the succeeding fiscal year.

8.03 *Reports to Current and Former Partners.* After the end of each fiscal year, the Managing Partners shall cause the independent public accountants to prepare a report setting forth in sufficient detail such transactions effected by the Partnership during such fiscal year as shall enable each Partner to prepare their respective Federal Income Tax returns in accordance with the laws, rules and regulations then prevailing, and shall mail such report to (i) each Partner and (ii) each former General Partner (or his legal representative) who may require such information in preparing his Federal income tax return.

ARTICLE IX

MISCELLANEOUS

9.01 *General.* This Agreement: (i) shall be binding on the executors, administrators, estates, heirs, and legal successors of the Partners; (ii) shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and to be performed in that state; and (iii) may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart as of the day and year first above written, provided, however, that each separate counterpart shall have been executed by at least one of the General Partners.

9.02 *Power of Attorney.* Each of the undersigned does hereby constitute and appoint Malcolm K. Fleschner, William J. Becker and Harold B. Ehrlich, each acting singly, as his true and lawful representative and attorney-in-fact, in his name, place and stead to make, execute, sign and file a Certificate of Limited Partnership of the Partnership, any amendment thereof required because of an amendment to this Agreement or in order to effectuate any change in the membership of the Partnership or in the Capital Contributions of the Partners and all such other instruments, documents and certificates which may from time to time be required by the laws of the United States of America, the State of New York or any other state in which the Partnership shall determine to do business, or any political subdivision or agency thereof, to effectuate, implement and continue the valid and subsisting existence of the Partnership.

Such representatives and attorneys-in-fact shall not, however, have any right, power or authority to amend or modify this Agreement when acting in such capacities.

9.03 *Amendments to Partnership Agreement.* The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the written consent of Partners having in excess of 50% of the Partnership Percentages and the written consent

of General Partners having in excess of 66⅔% of the Partnership Percentages of the General Partners, insofar as is consistent with the laws governing this Agreement.

9.04 *Investment Representation.* Each Partner, by executing this Agreement, represents and warrants that his interest in the Partnership has been acquired by him for his own account (or for accounts as to which he has sole investment discretion) for investment and without any intention of further distributing such interest, that he does not presently have any reason to anticipate any change in his circumstances, or any other particular occasion or event which would qualify this representation and warranty, and that he is fully aware that in agreeing to admit him as a Partner the Partnership is relying upon the truth and accuracy of this representation and warranty.

9.05 *Notices.* Each notice relating to this Agreement shall be in writing and delivered in person or by registered or certified mail. All notices to the Partnership shall be addressed to its principal office and place of business. All notices addressed to a Partner shall be addressed to such Partner at the address set forth in this Agreement. Any Partner may designate a new address by notice to that effect given to the Partnership. Unless otherwise specifically provided in this Agreement, a notice shall be deemed to have been effectively given when mailed by registered or certified mail to the proper address or delivered in person.

9.06 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute a single instrument.

9.07 *Good Will.* No value shall be placed on the name or good will of the Partnership.

9.08 *Headings.* The titles of the Articles and the headings of the sections of this Agreement are for convenience of reference only, and are not to be considered in construing the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereto set their hands and seals as of the day and year first above written.

GENERAL PARTNERS

MALCOLM K. FLESCHNER
MALCOLM K. FLESCHNER

WILLIAM J. BECKER
WILLIAM J. BECKER

HAROLD B. EHRLICH
HAROLD B. EHRLICH

LIMITED PARTNERS

MARJORIE ABRAHAMSON
MARJORIE ABRAHAMSON

ROBERT ABRAHAMSON
ROBERT ABRAHAMSON

CUSTOM SHOP PARK AVENUE CORP.
By R. A. ADLER, *Treasurer*

198-204 MAIN STREET CORP.
By R. A. ADLER, *Treasurer*

CUSTOM SHOP 55TH ST. CORP.
By R. A. ADLER, *Treasurer*

CUSTOM SHOP DALLAS CORP.
By R. A. ADLER, *Treasurer*

IRVING BADER
IRVING BADER

NATHAN BADER
NATHAN BADER

ROBERT B. BAUM
ROBERT B. BAUM

LIONEL R. BAUMAN
LIONEL R. BAUMAN

SYLVIA D. BAUMAN
SYLVIA D. BAUMAN

FREDERIC K. BECKER
FREDERIC K. BECKER

FREDERIC K. BECKER, *Trustee*
FREDERIC K. BECKER, as Trustee of separate trusts under instruments dated June 17, 1959 and March 9, 1961 for the benefit of Laurie Jeanne Becker and Wendy Lee Becker respectively

FREDERIC K. BECKER, *Trustee*
MARJORIE BECKER Trust
FREDERIC K. BECKER Trustee

MARJORIE BECKER
MARJORIE BECKER

MAX BECKER
MAX BECKER

WILLIAM J. BECKER, *Trustee*
WILLIAM J. BECKER, as Trustee under instrument dated 10/1/67 for the benefit of Doris Morris

KENNETH W. BILBY
KENNETH W. BILBY

NATALIE BLONDER
NATALIE BLONDER

RITA F. CAINE
RITA F. CAINE

DANIEL W. COLBURN, M.D.
DANIEL W. COLBURN, M.D.

J. P. DOWNER
J. P. DOWNER

JAMES L. ELIASOPH, M.D.
JAMES L. ELIASOPH, M.D.

JOAN ELIASOPH, M.D.
JOAN ELIASOPH, M.D.

ANDREW K. FLESCHNER
ANDREW K. FLESCHNER

CHARLES FLESCHNER
CHARLES FLESCHNER

JANICE FLESCHNER
JANICE FLESCHNER

LAURA B. FLESCHNER
LAURA B. FLESCHNER

MALCOLM K. FLESCHNER
as Trustee
MALCOLM K. FLESCHNER, as Trustee under Article 5th, under the will of B. V. Fleschner for the benefit of Cecil Fleschner

MALCOLM K. FLESCHNER
as Trustee
MALCOLM K. FLESCHNER, as Trustee under Article 5th under the will of B. V. Fleschner for the benefit of Rita F. Caine

EVA S. GOLDBERG
EVA S. GOLDBERG

ALAN J. GOLDEN
ALAN J. GOLDEN

G. VAN TSAI *Present Interest Trust*

By FREDERIC L. CORNEEL,
Trustee

SYLVAN A. GOODMAN,
Trustee

LUISE R. GREENSTEIN
LUISE R. GREENSTEIN

L. C. JOHNSTON
L. C. JOHNSTON

PEGGY PAYNE JOHNSTON
PEGGY PAYNE JOHNSTON

MORTIMER LEVITT
MORTIMER LEVITT

MRS. MARLENE LUPIN
MRS. MARLENE LUPIN

PIONEER LANDS CORPORATION

By LOUIS MARX, *President*

GILBERT S. MESSING
GILBERT S. MESSING

MORRIS M. MESSING
MORRIS M. MESSING

ROBERT H. MESSING
ROBERT H. MESSING

ABRAHAM J. MORRIS
ABRAHAM J. MORRIS

ARTHUR MORRIS, *Trustee*
ARTHUR MORRIS, as Trustee of separate trusts under instruments dated December 28, 1960, December 28, 1960 and December 28, 1960 for the benefit of Judith Morris, Keith Scott Morris and Robin Morris, respectively

ARTHUR MORRIS
ARTHUR MORRIS

BARBARA MORRIS
BARBARA MORRIS

DORIS MORRIS
DORIS MORRIS

LAURENCE MORRIS
LAURENCE MORRIS

LAURENCE MORRIS, *Trustee*
LAURENCE MORRIS, as Trustee of separate trusts under instruments dated December 24, 1960 and December 28, 1960 for the benefit of Eric Morris and Jeffrey Morris respectively

ROBERT H. MORRIS
ROBERT H. MORRIS

B. WILLIAM PAYNE
B. WILLIAM PAYNE

ROBERT B. PAYNE
ROBERT B. PAYNE

UNITED CONTINENTAL CORPORATION

By WALTER PETSCHEK,
President

MORRIS PLAPLER
MORRIS PLAPLER

LEO POMERANCE
LEO POMERANCE

BERNARD BORKS AND FRANK RUBINSTEIN, *a Partnership*

By BERNARD BORKS

FRANK RUBINSTEIN

FRANK M. RUBINSTEIN
FRANK M. RUBINSTEIN

PRIME FUNDING CO.

By MURRAY RUBENSTEIN

ESTELLE RUBENSTEIN

MRS. BELLE SCHULTZ
BELLE SCHULTZ

EDMOND C. SEMEL
EDMOND C. SEMEL

SUSAN SEMEL
SUSAN SEMEL

RUTH SONNENBLICK
RUTH SONNENBLICK

SUSAN SONNENBLICK
SUSAN SONNENBLICK

HOWARD D. TAYLOR
HOWARD D. TAYLOR, as Trustee of separate trusts under instruments dated December 12, 1960 and December 12, 1960 for the benefit of James Andrew Becker and Robert Kenneth Becker, respectively

ILLINOIS PROPERTIES, INC.

By LAURENCE A. TISCH

ERVING WOLF
ERVING WOLF

FLESCHNER BECKER ASSOCIATES

330 MADISON AVENUE
NEW YORK CITY 10017
986-2902

Exhibit D to Becker Affidavit (Report from FBA)

APRIL 1 - JULY 31, 1966

Standard & Poors 500 Stock Average	- 6.3%
FLESCHNER BECKER ASSOCIATES	+ 2.9%

Since April 1st. we have lost 2.4% on the long side, and gained 5.3% on the short side for a net gain of 2.9%. During this period, the Standard & Poors 500 Stock Average declined 6.3%. Although we are not satisfied, we feel this has been a satisfactory performance in a most difficult and frustrating market. We are encouraged by our ability to preserve capital in the most severe market decline since 1962.

During the past month, we increased our risk in the expectation of a market rally. In the absence of such rally, we have again reduced our risk to 40%, hoping to protect our capital against further market deterioration, while maintaining well selected long positions that would participate in a rising market.

We will no longer distribute a list of our positions, but will be happy to discuss our securities with you on the telephone.

FLESCHNER BECKER ASSOCIATES

Defendant Halpern's Affidavit in Support of Defendants' Motion for Summary Judgment

(Conformed Copy)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs, -against- MALCOLM K. FLESCHNER, et al., Defendants.	:	71 Civ. 344 (RLC) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEONARD J. HALPERN, being duly sworn, deposes and says:

1. I am a certified public accountant residing at 114 Baltusrol Road, Summit, New Jersey.

2. I was an employee of Harry Goodkin & Company, ("Goodkin") an accounting firm, from before 1965 until December 31, 1967, and a partner in that firm from January 1, 1968 until December 31, 1968. On January 1, 1969, I was employed by Fleschner Becker Associates ("FBA") as an accountant and since that time I have performed accounting services for FBA, either as an employee of FBA or other entities which contracted to perform certain administrative services for FBA. I am familiar with the books of original entry, the general ledger, the securities ledger, and other files and records of FBA and with the manner in which they were maintained.

3. With respect to their limited partnership interests in FBA, the FBA books, kept in the regular course of business, reveal that plaintiffs Marjorie and Robert Abrahamson made capital contributions and withdrawals which were credited to or charged against their interests on the dates and in the amounts set forth below:

Robert Abrahamson

Date	Capital Contributions	Withdrawals
July 1, 1965	$150,000.00	
Sept. 30, 1967		$ 8,000.00
Sept. 30, 1968		32,500.00
Sept. 30, 1969		70,000.00
Sept. 30, 1970		45,500.00
Distributive share on withdrawal from the partnership		150,097.00
TOTALS	$150,000.00	$306,097.00

Marjorie Abrahamson

Date	Capital Contributions	Withdrawals
July 1, 1965	$180,000.00	
Oct. 1, 1966	2,652.22	
Sept. 30, 1967		$ 57,015.70
Oct. 1, 1967	266,847.13	
Sept. 30, 1968		58,000.00
Sept. 30, 1969		52,500.00
Sept. 30, 1970		73,500.00
Distributive share on withdrawal from the partnership		$341,565.00
TOTALS	$449,499.35	$582,580.70

4. The books, records and files routinely maintained by FBA in the regular course of business indicated that FBA was investing in securities or other investments the resale of which may have been restricted. Moreover, these indications existed contemporaneously with the purchase of such assets such that an inspection of FBA books, records and files would have revealed FBA's ownership of such assets as soon as they were purchased.

/s/ Leonard J. Halpern
Leonard J. Halpern

Sworn to before me this
14 day of January, 1974.

/s/ George R. Blakley
Notary Public

GEORGE R. BLAKLEY
Notary Public, State of New York
No. 24-0310950
Qualified in Kings County
Cert. Filed in New York County
Commission Expires March 30, 1975

[Seal of notary public affixed]

Defendant Ehrlich's Notice of Motion for
Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs, -against- MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY, Defendants.	71 Civ. 344 (RLC) NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Harold B. Ehrlich, sworn to the 25th day of January, 1974, and upon the pleadings and prior proceedings heretofore had herein and upon and joining in the motion submitted on behalf of defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates, the undersigned will move this Court, at the United States Court House, Foley Square, New York, New York, on the 8th day of February, 1974, at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for an Order, pursuant to Rule 56, of the Federal Rules of Civil Procedure, granting defendant Harold B. Ehrlich summary judgment dismissing the Complaint as against him on the ground there is no genuine issue as to any material fact and that said defendant Ehrlich is entitled to judgment as a matter of law, or in the alternative partial judgment dismissing the Complaint insofar as it alleges claims for periods when defendant Ehrlich was not a partner of defendant Fleschner Becker Associates and for such other and further relief as to the Court may seem just and proper,

together with the cost of this action.

Dated: New York, New York

January 25, 1974

Yours, etc.

HILL, BETTS & NASH

By /s/ Mark M. Jaffe
A Member of the Firm
Attorneys for Defendant
Harold B. Ehrlich

To:

SHEA GOULD CLIMENKO & KRAMER
Attorneys for Plaintiffs
330 Madison Avenue
New York, New York 10017

SULLIVAN & CROMWELL
Attorneys for Defendants
William J. Becker, Malcolm K.
Fleschner and Fleschner Becker
Associates
48 Wall Street
New York, New York 10005

D'AMATO COSTELLO & SHEA
Attorneys for Defendant
Harry Goodkin & Company
116 John Street
New York, New York 10038

Defendant Ehrlich's Rule 9(g) Statement

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs, -against- MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES and HARRY GOODKIN & COMPANY, Defendants.	71 Civ. 344 (RLC)

STATEMENT PURSUANT TO RULE 9(g)
OF THE GENERAL RULES OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK
ON BEHALF OF DEFENDANT HAROLD B. EHRLICH

Defendant Harold B. Ehrlich ("Ehrlich") joins in and incorporates by reference herein the Rule 9(g) Statement, together with the exhibits annexed thereto, submitted on behalf of defendants Malcolm K. Fleschner, William J. Becker, and Fleschner Becker Associates ("FBA") and further contends that as to the following material facts, in respect of defendant Ehrlich, there is no genuine issue to be tried:

1. Plaintiffs became limited partners of FBA upon its organization on July 1, 1965 under the name of the Fleschner Company. Plaintiffs withdrew as limited partners of FBA on September 30, 1970.

2. Defendant Ehrlich became a general partner of FBA on October 1, 1968. On July 24, 1969, defendant Ehrlich ceased to take part in the management of the partnership business and pursuant to an agreement dated September 16, 1969, withdrew from the partnership, effective September 30, 1969.

3. The fiscal year of FBA during which defendant Ehrlich was a general partner began on October 1, 1968 and ended on September 30, 1969.

4. Defendant Ehrlich did not participate in the preparation of any reports or certified financial statements of FBA for any periods which preceded or followed the period October 1, 1968 to September 30, 1969.

5. By reason of his withdrawal from the management of FBA on July 24, 1969 and from the partnership on September 30, 1969, defendant Ehrlich did not participate in the preparation of FBA's annual report or certified financial statements for the fiscal year ended September 30, 1969.

6. The only reports issued to the partnership in respect of the investment portfolio of FBA during the fiscal year ended September 30, 1969 were monthly reports consisting of comparisons of the performance of FBA's portfolio with that of Standard & Poor's 500 Stock Index. Said reports had been issued by the partnership in substantially identical form without objection or inquiry by plaintiffs prior to the time defendant Ehrlich became a general partner in FBA.

7. The Agreement of Limited Partnership of FBA, revised and effective as of October 1, 1968, which was executed by plaintiffs and defendant Ehrlich provided at Section 1.04 that the partnership was organized:

> (a) to invest and trade, on margin or otherwise, in capital stock, preorganization certificates and subscriptions, warrants, bonds, notes, debentures, whether subordinated, convertible or otherwise, trust

receipts and other securities of whatever kind or nature of any person, corporation, government or entity, in rights and options relating thereto, including put and call options written by the Partnership or by others, and in commodities and commodity contracts (all such items being called herein "Securities"), to sell Securities short and cover such sales, and to lend funds or properties of the Partnership either with or without security; and

(b) to engage in such other businesses, activities and transactions as the Managing Partners may from time to time determine.

8. Section 2.01 of the Agreement of Limited Partnership vested the management of the partnership in the General Partners or such of them as are from time to time designated as "Managing Partners".

9. Section 2.02 of the Agreement of Limited Partnership gave the Managing Partners power "to carry out any and all of the objects and purposes of the Partnership set forth in section 1.04".

10. During the entire period from October 1, 1968 to September 30, 1969 while defendant Ehrlich was a general partner of FBA, the books and records of FBA were maintained at the partnership's offices at 330 Madison Avenue, New York, New York and were open to inspection to all partners, including plaintiffs.

11. During the period October 1, 1968 to September 30, 1969 while defendant Ehrlich was a general partner in FBA, and prior thereto, FBA held positions in securities the sale of which was restricted and such restrictions were reflected in the books, records and accounts

maintained by FBA which at all material times were available to plaintiffs.

Dated: New York, New York
January 25, 1974

HILL, BETTS & NASH

By: /s/ Mark M. Jaffe
A Member of the Firm

Attorneys for Defendant
HAROLD B. EHRLICH
Office and P. O. Address
One World Trade Center
Suite 5215
New York, New York 10048
(212) 466-4900

Defendant Ehrlich's Affidavit in Support of Defendants' Motion for Summary Judgment

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs, -against- MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES and HARRY GOODKIN & COMPANY, Defendants.	71 Civ. 344 (RLC) AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HAROLD B. EHRLICH, being duly sworn, deposes and says:

1. I reside at 146 Central Park West, New York, New York.

2. I became a general partner of Fleschner Becker Associates ("FBA") on October 1, 1968. As a result of certain differences between myself and defendants Malcolm K. Fleschner and William J. Becker, not relevant to any issue in the litigation here, I ceased to take part in the management of the partnership business on July 24, 1969 and pursuant to an Agreement dated September 16, 1969, I withdrew from the partnership effective September 30, 1969. A copy of the Agreement provided for my withdrawal is annexed hereto as Exhibit A and a copy of the Notice of Withdrawal mailed to the partners of FBA, including plaintiffs, is annexed as Exhibit B.

3. The fiscal year of FBA during which I was a partner began on October 1, 1968 and ended on September 30, 1969.

4. Because I was a partner and participant in FBA solely during the fiscal period beginning October 1, 1968 and ending on September 30, 1969, I did not participate in any way in the preparation of FBA's annual report or certified financial statements for the period ending September 30, 1968 of which plaintiffs complain.

5. Because of my withdrawal from the management of FBA on July 24, 1969 and from the partnership on September 30, 1969, I also did not participate in the preparation of FBA's annual report or certified financial statements for the fiscal year ended September 30, 1969 during which I had been a partner.

6. At all times while I was a partner of FBA, the books, records and accounts of FBA were maintained at the offices of the partnership at 330 Madison Avenue, New York, New York, and were open to inspection to all partners, including plairtiffs.

7. While I was a partner in FBA, the partnership held positions in securities the sale of which was restricted and such restrictions were duly reflected in the books, records and accounts of FBA which were available to plaintiffs.

8. While I was a partner in FBA, as a partnership entity it never rendered investment advice or investment advisory services to any individual or firm or compensation of any kind.

Harold B. Ehrlich

Sworn to before me this
25th day of January, 1974.

Notary Public

PETER J. [illegible]
Notary [illegible] of New York
[illegible]
Qualified in [illegible] County
Certificate filed in New York County
Commission Expires March 30, 1974

Exhibit A to Ehrlich Affidavit (Letter to Fleschner and Becker)

140 East 72nd Street
New York, New York
September 16, 1969

Mr. Malcolm K. Fleschner and
Mr. William J. Becker
330 Madison Avenue
New York, New York 10017

Dear Mal and Bill:

In June of this year, you asked me to reduce my interest in the two partnerships and in our various other ventures from the previously agreed upon 25%, to 10%. You said that this was necessary in your judgment because of your reappraisal of my skills and the need to have interests available to offer to others you would like to bring in as partners. I told you I would be willing to consider some reduction, but none that would take me below 15%. In July, we determined that we would be unable to agree upon a new percentage for me, whereupon, by letter dated July 24, 1969, I gave you notice of my withdrawal from the two partnerships.

With this letter, we confirm the agreed upon terms of (i) my withdrawal from the two partnerships and from our various other ventures, and (ii) our mutual release of each other of all claims growing out of our previous business relationships.

1. Withdrawal

(a) I withdraw as a General Partner of Fleschner Becker Associates as of September 30,

EXHIBIT A

1969, confirming that from July 24, 1969, I have had no right to take part in the management of the Partnership business. It is agreed that in determining the Liquidating Share, my Participating Percentage as a General Partner shall be 25% for the period October 1, 1968, through May 31, 1969, and 22-1/2% for the period June 1, 1969, through September 30, 1969. You undertake to pay 85% of the Liquidating Share not later than October 10, 1969. The Liquidating Share will be in cash, except to the extent of the distribution in kind of warrants to purchase not more than 41,250 shares of Common Stock of International Nuclear Corporation.

(b) I withdraw as a General Partner of FBE Partners as of December 31, 1969, confirming that from July 24, 1969, I have had no right to take part in the management of the Partnership business. It is agreed that in determining the Liquidating Share, my Participating Percentage as a General Partner shall be 18.9% for the period June 1, 1969, through December 31, 1969. You undertake to pay $100,000 on account of the Liquidating Share not later than October 10, 1969, subject to adjustment at the end of the fiscal year.

AL

(c) I will remain an employee of Arctos Corporation through March 31, 1970, for which I will be conpensated by Arctos for services as an employee at the rate of $50,000 per annum. Although an employee of Arctos, I will be entitled to obtain other employment and will not be required to spend any specific amount of time on the business of Arctos. I, therefore, agree that I am not to be included in any employee benefit plans of Arctos.

2. Consultation

From and after March 31, 1970, I will be retained by Arctos as a consultant until July 16, 1974, for an aggregate fee of $500,000. The consultant's fee shall be paid semi-annually at the rate of $100,000 per annum on September 30 and March 31 of each fiscal year, beginning with the first payment of $50,000 on September 30, 1970. The final balance of $100,000 is to be paid on July 16, 1974. During this period, I shall be obligated to consult with Arctos at such time or times as may be mutually convenient, but in no event shall I be obligated to spend more than 30 hours per calendar quarter on matters relating to Arctos. In the event of my death prior to July 16, 1974, these payments shall be continued to my estate.

Arctos shall have the right to prepay the unpaid balance at the following discounts:

On or before September 30, 1970 - 24%
On or before September 30, 1971 - 18%
On or before September 30, 1972 - 13%
On or before September 30, 1973 - 6%

It is expressly understood and agreed that these payments from Arctos are the sole responsibility of Arctos, and that neither of you is personally guaranteeing such amounts, although by the acceptance of this letter, you undertake not to do any act directly or indirectly, the intent or effect of which is to impair Arctos' ability to pay these sums.

3. Release

Except for the rights and obligations set forth in the two partnership agreements and in this letter, we hereby release each other from any and all claims growing out of our previous business relationships.

Very truly yours,

Harold B. Ehrlich

AGREED:

Malcolm K. Fleschner

William J Becker

af

Arctos Corporation and its stockholders hereby agree to the terms and conditions of Paragraph 2 of the foregoing letter.

ARCTOS CORPORATION

By _____

Stockholders:

_____
Malcolm K. Fleschner

_____
William J. Becker

_____
Leon Pomerance

_____
Ralph Shaw

_____
Andrew Fleschner

_____
R. Leigh Duemler

ONLY COPY AVAILABLE
#1343

140 East 72nd Street
New York, New York
October 10, 1969

Mr. Malcolm K. Fleschner
Mr. William J. Becker
Fleschner Becker Associates
330 Madison Avenue
New York, New York 10017

Dear Mal and Bill:

Reference is made to our letter agreement dated September 16, 1969 pursuant to which you agreed that my Liquidating Share as a Partner of Fleschner Becker Associates will be paid to me in cash, except to the extent of the distribution in kind of warrants to purchase no more than 41,250 shares of common stock of International Nuclear Corporation. This will certify to my agreement to accept payment for my Liquidating Share in Fleschner Becker Associates totally in cash, and I further recognize that I have no right to a distribution in kind of warrants to purchase any shares of common stock in International Nuclear Corporation.

Except as specifically herein modified, the letter agreement of September 16, 1969 shall remain in full force and effect.

Sincerely,

Harold B. Ehrlich

Harold B. Ehrlich

Agreed:

Malcolm K. Fleschner

William J. Becker

PLF. EXH Halperin-19 FOR ID.
DATE 3-26-73
MARVIN A. MORGENTHAL

Fleschner
Becker
Associates

Exhibit B to Ehrlich Affidavit (Report to FBA)

Attached hereto is a conformed copy of the Agreement of Limited Partnership of Fleschner Becker Associates, revised as of October 1, 1968, which is the partnership agreement of the partnership presently in effect.

Since October 1, 1968 Harold B. Ehrlich has withdrawn as a general partner and Leon Pomerance and R. Leigh Duemler have been admitted as general partners.

The following limited partners withdrew from the partnership on September 30, 1969:

G. Van Tsai Present Interest Trust

Pioneer Lands Corporation

Leo Pomerance

The following were admitted to the partnership as limited partners on October 1, 1969:

Jacqueline D. Greenspon

Mollie Morris

Herbert Salzman

Iphigene Ochs Sulzberger
George D. Woods
Arthur Ochs Sulzberger
As Trustees of the Trust
under Paragraph 51st
of the Will of Adolph S. Ochs

Dated: October 1, 1969

FLESCHNER BECKER ASSOCIATES

By Malcolm K. Fleschner

EXHIBIT B

Plaintiffs' Notice of Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, :

Plaintiffs, : 71 Civ. 344 : RLC

-against- :

MALCOLM K. FLESCHNER, et al., : NOTICE OF MOTION

Defendants. :

- x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of Robert Abrahamson and Marjorie Abrahamson, sworn to March 11, 1974, and Henry H. Abrams, sworn to March 7, 1974, and the exhibits thereto, upon the annexed statement under Rule 9(g) of the General Rules of this Court, and upon the pleadings and prior proceedings herein, the undersigned will move this Court at the United States Court House, Foley Square, New York, New York on the 22nd day of March, 1974, at 10:00 a.m. or as soon thereafter as counsel can be heard, for an order under Rule 56 FRCP, granting plaintiffs summary judgment against all defendants who have appeared herein for the relief requested in the complaint, on the grounds that there is no genuine issue as to any fact material to the claims in the complaint, and that plaintiffs are entitled to judgment as a matter of law, and for such other and further relief as may be just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
March 12, 1974

Yours, etc.,

SHEA GOULD CLIMENKO & KRAMER

By _____
A Member of the Firm
Attorneys for Plaintiffs
300 Madison Avenue
New York, New York 10017
(212) 661-3200

TO: SULLIVAN & CROMWELL, ESQS.
Attorneys for Defendants
Malcolm K. Fleschner, William
J. Becker and Fleschner Becker
Associates
48 Wall Street
New York, New York 10005

D'AMATO, COSTELLO & SHEA, ESQS.
Attorneys for Defendants Harry
Goodkin & Company
116 John Street
New York, New York 10038

HILL, BETTS & NASH, ESQS.
Attorneys for Defendant
Harold B. Ehrlich
One World Trade Center
Suite 5215
New York, New York 10048

Plaintiffs' Rule 9(g) Statement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,	:	
Plaintiffs,	:	
-against-	:	73 Civ. 344: RLC
MALCOLM K. FLESCHNER, et al.,	:	
Defendants.	:	

PLAINTIFFS' STATEMENT UNDER RULE 9(g)
IN SUPPORT OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Material Facts As To Which
Plaintiffs Claim There Is
No Genuine Issue To Be Tried

1. Plaintiffs Marjorie Abrahamson and Robert Abrahamson are and have been since prior to July 1, 1965, husband and wife, residing in the State of Connecticut.

2. On or about July 1, 1965, plaintiffs became limited partners of Fleschner Becker Associates ("FBA"), then known as The Fleschner Company. Plaintiffs withdrew as limited partners of FBA as of September 30, 1970.

3. During the period of plaintiffs' investment, FBA was a limited partnership having as its principal purpose to invest and trade in securities.

4. Defendant Malcolm K. Fleschner was a general partner of FBA during the entire period of plaintiffs' investment, and was the only general partner in the period July 1, 1965 through March 30, 1966.

5. Defendant William J. Becker was a general partner of FBA at all times during the period of plaintiffs' investment from and after April 1, 1966.

6. Defendant Harold B. Ehrlich was a general partner of FBA from October 1, 1968 through September 30, 1969.

7. Defendant Harry Goodkin & Company ("Goodkin") is and was at all times subsequent to July 1, 1965 a partnership of certified public accountants with its principal office in New York, New York. Goodkin issued its certification of the statements of financial condition and related statements of FBA for the three months ended March 31, 1966; for the year ended September 30, 1966; for the year ended September 30, 1967; and for the year ended September 30, 1968. Goodkin's certification as to the FBA financial statements for the three months ended March 31, 1966 is dated May 3, 1966; its certification of the statements for the year ended September 30, 1966 is dated November 21, 1966; its certification of the financial statements for the year ended September 30, 1967 is dated December 15, 1967; its certification of the financial statements for the year ended September 30, 1968 is dated December 26, 1968.

8. Goodkin caused copies of its certifications mentioned in the preceding paragraph to be sent through the mails from its principal office in New York to the plaintiffs in Connecticut, together with copies of the financial statements so certified, and did so in accordance with an arrangement between it and the general partners of FBA. Before the statements were mailed to limited partners, the general partners of FBA examined them.

9. At or about the time of its formation in 1965, FBA had one general partner and 8 limited partners. As of April 1, 1966, FBA had two general partners and at least 35 limited partners. As of October 1, 1968, FBA had three general partners and at least 66 limited partners. FBA continued to have at least approximately 66 limited partners at all times from October 1, 1968 through September 30, 1970.

10. The principal office of FBA from April 1, 1966 until approximately August, 1971, was at 330 Madison Avenue, New York, New York.

11. At all times during plaintiffs' investment in FBA, the general partners of FBA caused monthly reports to be sent to all limited partners, including plaintiffs. Such monthly reports were sent to plaintiffs in Connecticut through the mails from New York. Such monthly reports customarily contained a brief indication of the gain or loss of FBA for the year to date, expressed in percentages, and a comparison of such performance with the performance of the Standard & Poor's 500 Stock Average for the same period. Such monthly reports also on occasion contained comments characterizing the position or performance of FBA. For example, the report dated November 2, 1967 states "We continue to maintain a low risk stance." The report dated December 1, 1967 states, "We remain in a most conservative posture." The report dated February 2, 1968 states, "We have maintained the previously mentioned low risk stance through the current market weakness." The report dated April 2, 1968 states, "Our investment posture remains most conservative." The 1968 year end report (September 30, 1968) stated that FBA had

increased its capital by approximately 90% and said, "It was another good year."

12. The certified financial statements sent to plaintiffs for the year ended September 30, 1968 were received by them in January, 1969. They showed the value of the capital account of plaintiff Marjorie Abrahamson as of September 30, 1968 as $1,141,386.14. They showed the value of the capital account of plaintiff Robert Abrahamson as of September 30, 1968 as $605,076.47.

13. In or about late December, 1969 or January, 1970, plaintiffs received a copy of the certified financial statements of FBA for the year ended September 30, 1969. These statements had been certified by a new firm of certified public accountants named Brach, Lane, Hariton & Hirshberg. The 1969 statements, in note 1 thereto, stated that FBA on September 30, 1969 held "unregistered securities" which had cost $30,592,639.00 and which had a value of $30,411,868.00. The statement of financial condition as at September 30, 1969 indicated that the total value of FBA's investments on that date was $39,355,310, and that the total value of its assets was $51,757,995.

14. Prior to their receipt of the certified financial statements for the year ended September 30, 1969, plaintiffs had not been informed and did not know of the existence and extent of FBA's investment in unregistered securities. Such information was not revealed in any of the monthly reports sent to them, or in the certified financial statements. Defendant Fleschner claims that he verbally mentioned three particular investments in private placements of unregistered securities to plaintiffs in 1967, but admits that he did not explain to them the meaning of the terms "private placement" or "unregistered securities." During

the period of plaintiffs' investment in FBA, FBA made approximately 80 separate purchases of unregistered securities, involving approximately 40 different securities (perhaps more, since some purchases were of "notes and warrants" together or "stocks and warrants" together).

15. FBA began to invest in unregistered securities in or about January of 1967. By September 30, 1967, unregistered securities constituted approximately 15% of the value of the investments of FBA, exclusive of cash equivalents, options and investments in oil leases, according to FBA's books. By September 30, 1968, unregistered securities constituted approximately 72% of the value of the investments of FBA, exclusive of such items, according to its books. During the year ended September 30, 1969, unregistered securities constituted the following approximate percentages of the value of FBA's investments, exclusive of the above-mentioned items, on the following dates, according to FBA's books:

12/31/68	95.3%
1/31/69	94%
2/28/69	79.5%
3/31/69	81.7%
4/30/69	86%
5/31/69	89.5%
6/30/69	91.7%
7/31/69	91.8%
8/31/69	98.4%
9/30/69	95%

During the year ended September 30, 1970, unregistered securities ranged from approximately 75% to approximately 95% of the value of FBA's investments, exclusive of the above-mentioned items, according to its books.

16. During the year ended September 30, 1969, the value of FBA's investment in unregistered securities, according

to its books, ranged from approximately $24,867,000 to approximately $57,900,000. During the year ended September 30, 1970, the value of FBA's investment in unregistered securities, according to its books, ranged from approximately $12,800,000 to approximately $35,000,000.

17. The FBA partnership agreement which was in effect at the time plaintiffs received their copies of the FBA financial statements for the year ended September 30, 1969 provided that a limited partner could withdraw from the partnership only "at the end of any fiscal year of the partnership," and then only on 60 days notice. Had plaintiffs known of FBA's extensive investment in unregistered securities prior to the sixtieth day preceding the close of FBA's fiscal year ending September 30, 1968, plaintiffs would have withdrawn as of the end of such fiscal year. Plaintiffs withdrew from FBA at the earliest possible time after learning of the extensive investment of FBA in unregistered securities. Upon her withdrawal, plaintiff Marjorie Abrahamson received $341,565. Upon his withdrawal, plaintiff Robert Abrahamson received $150,097.

18. At all times during plaintiffs' investment in FBA, the management of the business of FBA, including the making of investment decisions, was a function of FBA's general partners, and of such of them as were members of the "Executive Committee" (during the period April 1, 1966 through October 1, 1968) and of such of them as were designated "Managing Partners" (from and after October 1, 1968). Defendants Fleschner and Becker were members of the Executive Committee from April 1, 1966 through October 1, 1968, and were Managing Partners after October 1, 1968. Defendant Ehrlich was a Managing Partner during the period October 1, 1968 through at least July 24, 1969.

Plaintiffs' Response to The Rule 9(g) Statement of Defendants Fleschner, Becker and Fleschner Becker Associates

1. Plaintiffs deny the assertions set forth in paragraphs 7, 8 and 9 of defendants' statement. Plaintiffs concede that their total capital contributions did not exceed their total withdrawals, but claim that many of their withdrawals constituted their share of partnership income, and assert that such sums cannot be counted in determining the price received upon the sale of securities.

2. Plaintiffs deny the assertion of paragraph 10 of defedants' statement, respectfully refer to the relevant partnership agreement provisions, deny the materiality and relevance of such assertion, and allege that any contractual right of access to FBA's books and records was not of practical value to plaintiffs.

3. As to paragraph 11 of defendants' statement, plaintiffs do not know whether the notations as to the unregistered status of certain securities, allegedly contained in FBA's books and records, were so clear that they would have apprised plaintiffs that there were restrictions on the sale of such securities.

4. Plaintiffs controvert the assertions in the last sentence of paragraph 16 of defendants' statement, admitting that they did not discuss particular securities with any FBA general partner, but asserting that they had occasional general discussions with defendant Fleschner about the progress of FBA during the period referred to.

Plaintiffs' Response to the Rule 9(g) Statement of Defendant Ehrlich

1. Plaintiffs controvert the assertions in paragraph 4 of defendant Ehrlich's statement. They claim that defendant Ehrlich is responsible for the dissemination of the certified

financial statements of FBA for the year ended September 30, 1968, which statements were prepared and mailed during the period in which he was a general partner participating in the management of FBA. They also claim that defendant Ehrlich is responsible for the dissemination of monthly reports during such period.

2. Plaintiffs controvert the assertions of paragraph 6 of defendant Ehrlich's statement. They claim that the monthly reports on occasion contained comments characterizing FBA's performance in addition to the comparison with the Standard & Poor's 500 Stock Average. They also claim that the certified financial statements for the year ended September 30, 1968 were issued during the fiscal year ended September 30, 1969.

3. Plaintiffs controvert the assertions of paragraph 10 of defendant Ehrlich's statement. Based on the testimony of partners of Harry Goodkin & Company, they believe that at least some of FBA's books and records were maintained at the offices of Harry Goodkin & Company and not at the offices of FBA. As to the assertions in paragraphs 10 and 11 of defendant Ehrlich's statement that the books and records of FBA were available to plaintiffs and open to their inspection, plaintiffs repeat their above response to paragraphs 10 and 11 of the Rule 9(g) statement of defendants Fleschner, Becker and Fleschner Becker Associates.

Plaintiffs' Response to the Rule 9(g) Statement of Defendant Harry Goodkin & Company

1. As to the assertion in paragraphs 5,7, and 8 of the statement of defendant Harry Goodkin & Company, plaintiffs repeat their above response to paragraphs 7, 8 and 9 of the

statement of defendants Fleschner, Becker and Fleschner Becker Associates.

2. As to paragraph 11 of defendant Harry Goodkin & Company's statement, plaintiffs respectfully refer to the pertinent provisions of the partnership agreements, and also claim that not only the Managing Partners but also the certified public accountants for Fleschner Becker Associates had some responsibility for accounting procedures.

SHEA GOULD CLIMENKO & KRAMER

By _____
A Member of the Firm
330 Madison Avenue
New York, New York 10017
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Plaintiffs' Affidavit in Support of their Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,	:	
Plaintiffs,	:	AFFIDAVIT
-against-	:	
MALCOLM K. FLESCHNER, et al.,	:	73 Civ. 344 : RLC
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, being duly sworn, depose and say:

1. We are the plaintiffs in this action. We make this joint affidavit in support of our motion for summary judgment herein. We also respectfully ask that this affidavit be read in opposition to the motions of all defendants for summary judgment dismissing the complaint.

2. We are husband and wife. At all times pertinent to this lawsuit, we have resided in the State of Connecticut.

3. This action arises from our investment in Fleschner Becker Assocaites ("FBA"), a limited partnership formed primarily for the purpose of investing and trading in securities, and from our withdrawal as limited partners of FBA. The complaint alleges claims arising from this relationship based upon Rule 10b-5 under the Securities Exchange Act of 1934, and based upon the Investment

Advisers Act of 1940 and on the common law.

4. The defendants have moved for summary judgment dismissing the complaint. All defendants make the following assertions:

a. Plaintiffs have not suffered any damages, and therefore have no claim under Rule 10b-5.

b. The FBA agreement of limited partnership authorized the purchase of securities of every kind, including unregistered securities, and therefore plaintiffs cannot complain of such purchases.

c. Plaintiffs are chargeable with constructive knowledge of the existence of FBA's extensive investment in unregistered securities, because, under the partnership agreement and under New York law, they were entitled to inspect FBA's books and records.

d. Defendants were not "investment advisers" under the Investment Advisers Act of 1940.

In addition, defendant Harry Goodkin & Co. asserts that the failure to disclose pertinent information was not "in connection with the purchase or sale of a security" within the meaning of Rule 10b-5, and asserts that it did not act in concert with any of the defendants. Finally, defendant Ehrlich asserts that there was no wrong doing during the period in which he was a general partner of FBA, and that therefore the complaint should be dismissed as to him in any event.

5. Counsel have advised that all of the foregoing assertions are without merit, as a matter of law and of undisputed fact. Each of these assertions is discussed further below.

6. We also move for summary judgment. We set forth below the major background facts concerning our investment in, and withdrawal from, FBA. It should be understood that the narrative which follows does not constitute the entire story, but only the facts we believe to be undisputed, based upon the pleadings and the testimony which has been given in the course of pre-trial depositions in this case. Following our summary of the major facts, we deal with the above-listed contentions of defendants. We then show that we should be granted summary judgment because we were induced to invest in and hold our limited partnership participations in FBA on the basis of misleading statements and omissions perpetrated by all defendants which had the effect of concealing from us the existence of FBA's extraordinarily large investment in unregistered securities, with the result that, when we learned the facts and withdrew from FBA, we received far less than we would have received had we been told the truth at the appropriate time.

Summary of Undisputed Facts

7. We are informed that the following facts are undisputed and need no documentation, because they are alleged by defendants themselves in the papers supporting defendants' motion:

a. On or about July 1, 1965, we became limited partners of FBA (then known as The Fleschner Company), and withdrew as limited partners of FBA as of September 30, 1970. (See, e.g., ¶1 of the statement

under Rule 9(g) of defendants Fleschner, Becker and FBA, hereinafter referred to as "Fleschner Statement.")

b. Defendant Malcolm K. Fleschner was at all times a general partner of FBA (Fleschner Statement, ¶2).

c. Defendant William J. Becker was a general partner of FBA at all times from and after April 1, 1966. (Fleschner Statement, ¶3).

d. Defendant Harold B. Ehrlich was a general partner of FBA from October 1, 1968 through September 30, 1969. (Fleschner Statement, ¶4; Ehrlich Statement under Rule 9(g), ¶2).

e. At its formation on July 1, 1965, FBA had one general partner, defendant Fleschner, and eight limited partners (Fleschner Statement, ¶5). As of April 1, 1966, FBA had two general partners and at least thirty-five limited partners; as of October 1, 1968, FBA had three general partners and at least sixty-six limited partners (see partnership agreements attached as Exhibits B and C to affidavit of defendant Becker in support of defendant's motion for summary judgment, sworn to January 9, 1974).

f. From April 1, 1966 until approximately August, 1971, FBA's principal place of business was at 330 Madison Avenue, New York, New York (Fleschner Statement, ¶6).

g. At all times the authority to make investment decisions for FBA was vested, under its partnership agreement, in its general partners (Fleschner Statement, ¶12).

h. FBA first invested in securities the resale of which was restricted in January, 1967 (Fleschner Statement, ¶15).

i. Defendant Harry Goodkin & Co. ("Goodkin") is and was at all pertinent times a partnership of certified public accountants with its principal offices in New York, New York (Goodkin Statement under Rule 9(g), ¶4).

j. Goodkin examined and rendered an opinion (dated May 3, 1966) of the statement of financial condition and related statements of net worth and income of FBA for the three months ended March 31, 1966. It examined and rendered an opinion (dated November 21, 1966) of the similar statements of FBA for the year ended September 30, 1966. It examined and rendered an opinion (dated December 15, 1967) of the similar statements of FBA for the year ended September 30, 1967. It examined and rendered an opinion (dated December 26, 1968) of the similar statements of FBA for the year ended September 30, 1968. (Goodkin Statement, ¶4).

8. We made our initial investment in FBA as a result of conversations we had with defendant Fleschner in 1964 and in

1965. Mr. Fleschner told us that he intended to loan money belonging to him and members of his family to an investment partnership named A. W. Jones. He said he was considering becoming a partner in A. W. Jones or starting an investment partnership which would operate in a fashion similar to A. W. Jones. He showed us a brochure describing A. W. Jones, which mentioned, among other things, that A. W. Jones had engaged in short selling, and that it had avoided suffering substantial losses at times when the securities markets were falling steeply. Mr. Fleschner subsequently told us that he had decided not to join A. W. Jones, and had instead decided to form an investment partnership which would use some of the same investment techniques. We explained to Mr. Fleschner that we were interested in the security of our investment and in a conservative approach, since we were both getting on in years, and since we both remembered the terrible hardships that some people suffered as a result of investments lost during the depression which began in 1929. Mr. Fleschner told us that his proposed method of operation would be conservative, since the ability to sell short would enable him to protect the partnership assets in the face of falling securities markets.

9. We have read the testimony given by Mr. Fleschner during his deposition, and it appears that he confirms our version of these conversations in many, if not most, respects. Attached hereto as Exhibit 1 is a copy of pp. 50-59 of Mr. Fleschner's deposition so demonstrating.

10. During our investment in FBA, we received annually copies of certain financial statements of FBA together with the opinion of its accountants, Harry Goodkin & Co. These documents

were sent to us through the mails by Goodkin. By way of example, we attach as Exhibit 2 a copy of an envelope, bearing cancelled stamps, addressed to Robert Abrahamson and showing "Harry Goodkin & Co., Certified Public Accountants, 115 Broadway, New York, New York 10006" as the printed return address. This envelope contained plaintiff Robert Abrahamson's copy of the certified statements of FBA for the year ending September 30, 1967. It should also be noted that Mr. Leonard J. Halpern , formerly an employee and a partner of Goodkin, testified during his deposition that the annual statements were mailed by Goodkin from its premises to the partners of FBA (pp. 63-64).

11. It also appears from the pre-trial testimony that before the annual financial statements were mailed to limited partners, they were examined in draft and final form by the general partners of FBA. Mr. Fleschner testified on this subject as follows (pp. 18-19):

> "Q Once a year during 1966, through 1968, the annual statements would be audited by Goodkin & Company, would they not?
>
> A Yes, they would be.
>
> "Q And then copies of the certified statements would be mailed to the partners -- to the limited as well as the general partners; is that right?
>
> A Yes.
>
> "Q And did you see the statements and the certification before it was mailed?
>
> A Yes.

"Q Did the general partners see those statements and certifications before mailing?

A Yes."

He also said (pp. 24-25):

"Q When you saw the statements and certifications by Goodkin & Company before mailing them to the limited partners, did you examine them?

A Yes.

"Q Did you thereafter have any communication with Goodkin & Company before the mailing of the statements and certification?

A As I recall, we went over the format of the proposed audit to be sent to the partners and discussed headings and columns and that sort of thing -- presentation.

"Q Well, you call it a proposed audit --

A (Continuing) The format I was discussing is that we discussed the format of the audit.

"Q Am I correct that what Goodkin & Company would send the general partners would be only the order of a draft of the statements that they proposed to send?

A Yes.

"Q And the general partners would then look them over?

A Yes.

"Q And if there was some suggestion you wanted to make, you would make it?

A Yes."

Mr. Becker testified similarly (pp. 14-16). Mr. Halpern also confirmed that before the annual certified statements were sent to limited partners, they were first discussed in draft form with the general partners of FBA (pp. 28, 30-31).

12. Goodkin had been selected by the general partners of FBA to audit its books and to prepare annual reports for the partners. It also sent the reports to partners pursuant to an arrangement with the general partners of FBA. This is spelled out in the Partnership Agreement revised as of October 1, 1968, a copy of which appears as Exhibit C to the Becker Affidavit. Section 8.02 of that Agreement provides that the books are to be audited by independent certified public accountants selected by the managing partners (p. 17). Section 8.03 provides that the managing partners "shall cause the independent public accountants to prepare and shall mail" annual reports to each partner (p. 17).

13. In addition to the annual certified financial statements, limited partners of FBA also received monthly reports. These were usually brief one-page statements, sent through the mails by FBA from its Manhattan office. These reports usually set forth the percentage increase or decrease in the value of FBA's investments for the year to date, and compared FBA's performance with the performance during the same period of the Standard & Poor's 500 Stock Average. The reports also often contained comments characterizing the performance or position of FBA.

14. Attached hereto as Exhibits 3 and 4 are copies of the certified financial statements sent to us by Goodkin for the years ending September 30, 1967 and September 30, 1968. Attached hereto as Exhibits 5, 6, 7, 8 and 9 are copies of certain of the monthly reports sent to us by FBA. These are the monthly reports dated November 2, 1967; December 1, 1967; February 2, 1968; April 2, 1968; and the 1968 year end report (September 30, 1968).

15. It will be seen that the statement of financial condition contained in the 1967 year end certified financial statements (Exhibit 3 hereto) describes the FBA investment portfolio as "Investment in securities and put and call options," stating that the "market value" on September 30, 1967 was in excess of $28,000,000. In fact, on the basis of an investigation performed by an accountant retained by us and described further below, we believe that FBA had an investment in unregistered securities on September 30, 1967 of approximately $4,300,000. This fact was not revealed in the financial statements. The opinion preceding the 1967 statements refers at one point to "market value of securities held for investment." Although we did not know this until shortly prior to our withdrawal from FBA, we are now informed that the words "held for investment" are sometimes used to refer to unregistered securities. This was never explained to us by any of the defendants. The use of the words "market value" further prevented us from suspecting that there was any restriction upon the sale or marketability of these securities. The use of the term "market value" in the statement of financial condition had a similar effect.

16. It will be seen that the statement of financial condition as at September 30, 1968, contained in the certified financial statements for the year then ending (Exhibit 4 hereto) contained a category entitled "Investments," under which was the item "Securities, and put and call options, at market" (emphasis added). The value stated for this item was $34,503,701.73. Again, there was no statement as to the existence and extent of investments in unregistered securities. In fact, we believe that on September 30, 1968 FBA had an investment of $24,867,189 in unregistered securities. This equaled approximately 72% of the investment of FBA in securities and options.

17. The term "market value of securities held for investment" was used again in the opinion as to the 1968 year end financial statements. Again this phrase did not alert us, because of our ignorance as to its meaning when used by securities attorneys, and because of the use of the word "market" in both the opinion and the statement of financial condition.

18. It will have been seen that in the period between September 30, 1967 and September 30, 1968, FBA was in the process of increasing its investment in unregistered securities from approximately $4,300,000 to nearly $25,000,000. It was increasing the percentage of its portfolio which represented unregistered securities from approximately 15% to approximately 72%. During this time, FBA was also sending limited partners such monthly reports as those which are annexed hereto as Exhibits 5 through 9. For example, the monthly report dated November 2, 1967 (Exhibit 5) stated, "We continue to maintain a low risk stance." The report dated December 1, 1967 (Exhibit

6) stated, "We remain in a most conservative posture." The report dated February 2, 1968 (Exhibit 7) stated, "We have maintained the previously mentioned low risk stance through the current market weakness." The report dated April 2, 1968 (Exhibit 8) stated, "Our investment posture remains most conservative." The 1968 year end report of September 30, 1968 (Exhibit 9) stated that FBA had increased its capital by approximately 90% and said, "It was another good year."

19. The monthly reports were caused to be sent to limited partners by the general partners. Mr. Fleschner appears to have so testified during his deposition. When shown examples of the monthly reports, Mr. Fleschner said (p. 62), "These appear to be the kind of communications we sent out to the partners of Fleschner Becker Associates during this period." The information in the monthly reports relating to the performance of FBA appears to have been based on monthly calculations made by FBA's internal accountants. Mr. Fleschner testified that the internal accountants made a monthly calculation of the value of the FBA portfolio (pp. 43-44).

20. During the period September 30, 1968 through September 30, 1969, FBA continued to mail monthly reports to us. While these reports generally did not contain comments characterizing FBA's performance or position, unlike earlier reports, the reports sent during fiscal 1969 did continue to set forth the percentage increase or decrease in FBA's portfolio compared with the Standard & Poor's 500 Stock Average. This information was given without elaboration. Typical was the monthly report dated February 3, 1969, a copy of which is annexed as Exhibit 10. It will be seen that this report contained only one sentence, which read as follows:

"Since October 1, we have gained 26% as compared to no change in the Standard & Poor's 500 Stock Average."

According to the information our accountant obtained during discovery in this action, on January 31, 1969 (three days prior to the date of this monthly report), FBA had a total portfolio value of approximately $61,500,000, of which approximately $57,900,000 or 94% consisted of unregistered securities.

21. In either late December, 1969 or early January, 1970, we received the certified financial statements of FBA for the year ending September 30, 1969. We were surprised to note that it had been sent to us by a new firm of auditors named Brach Lane Hariton & Hirshberg. A copy of the September 30, 1969 statements and certification is attached as Exhibit 11. Note 1 to the statements contained the following chart concerning the investments of FBA on September 30, 1969:

	Cost	Value
Securities - traded on national exchanges or over-the-counter	$10,835,672	$ 7,275,722
Unregistered securities	30,592,639	30,411,868
Interests in oil ventures	699,899	1,667,720
Total	$42,128,210	$39,335,310

22. This was the first time we had been informed that FBA had such an enormous investment in unregistered securities. Mr. Fleschner testified during his deposition that some time in 1967 he told Mrs. Abrahamson that FBA had acquired a number of American Realty convertible bonds in a private placement of unregistered securities (pp. 35-36). He also testified that he told Mrs. Abrahamson on the same occasion about an investment in the stock of a corporation called Kane Miller, also in a private placement of unregistered securities (pp. 36-37). Finally, he testified that on another occasion in 1967 he told

Mr. Abrahamson that FBA had "done some private investment" in the securities of Ling-Temco-Vought (pp. 39-40). We have no recollection of him telling us these things. Even if he had told us what he claims, we probably would not have fully understood at that time that unregistered securities acquired in a private placement were subject to restrictions upon re-sale. We were at that time completely ignorant as to the securities laws. Our only experience with restricted securities at this time had been the fact that Mrs. Abrahamson had owned some stock of a corporation by which she had been employed, which stock was subject to restrictions set forth in a stockholders' agreement. Mr. Fleschner has conceded that he did not explain "what unregistered meant" (Dep., p. 38). In any event, even if he had told us about these three purchases of unregistered securities and even if we had understood the meaning of the term "unregistered," this information would not have been significant in relation to the total number of FBA's purchases of unregistered securities. Our accountants' examination has revealed that FBA made approximately 80 separate purchases of unregistered securities, involving approximately 40 different securities (perhaps more, since some purchases were of "notes and warrants" together or "stock and warrants" together). It further appears that only a few of these purchases took place in 1967, when Mr. Fleschner claims these conversations took place. The vast majority of purchases took place later.

23. As we had been planning to do for several years, we both retired from our professions in the late 1960s. In view of that fact and in view of our long-held concern for our financial security (the existence of which was conceded by Mr. Fleschner at pp. 55-56 of his deposition), we would certainly have withdrawn as limited partners of FBA at the end of fiscal 1968 had we known the facts that were being concealed from us.

Similarly, we would have withdrawn at the end of fiscal 1969 had we known the facts. The certified financial statements for the year ending September 30, 1969, which revealed for the first time the enormous investment of FBA in unregistered securities, did not reach us until it was too late to withdraw as of the end of that fiscal year. The partnership agreement then in effect required withdrawing limited partners to give notice of withdrawal at least 60 days prior to the end of any fiscal year (see Exhibit C to Becker affidavit, ¶6.02).

24. We in fact withdrew from FBA as of the first available date after we had learned the facts. Unfortunately, this date was September 30, 1970. By that time, the value of our interests had declined considerably. At the end of fiscal 1968, the certified financial statements showed the value of Marjorie Abrahamson's account as $1,141,386.14, and the value of Robert Abrahamson's account as $605,076.47. Upon withdrawal, Marjorie Abrahamson received $341,565., and Robert Abrahamson received $150,097.

25. There can be no doubt that the existence of heavy investments in unregistered securities in 1968 and 1969 was well known not only to the general partners, but also to the auditors, Harry Goodkin & Company. The Rule 9(g) statements of defendants Fleschner, Becker and FBA, and of defendant Ehrlich, both assert that at all times when FBA held unregistered securities, the fact that there were restrictions upon such securities was reflected in FBA's books and records (Fleschner statement, ¶11; Ehrlich statement ¶11). Also, the answer to the complaint filed herein by Goodkin specifically admits "that Fleschner Becker Associates in-

vested in securities not registered under the Securities Act of 1933. . . " (¶16).

26. Moreover Mr. Leonard J. Halpern, formerly an employee and partner of Goodkin, and Mr. Howard Taylor, also a former partner of Goodkin, both testified that during the years involved here FBA had investments in unregistered securities and they were both aware of that fact. Mr. Halpern was asked about his procedures when performing audits of FBA's books, and stated that his procedures included investigation of the registered or unregistered status of the securities. He said (p. 37),

> "Q Now, did your procedures include any procedure to determine whether the securities in which FBA had invested included any unregistered securities?
> A Yes. Fleschner Becker Associates had unregistered securities."

Mr. Taylor testified that sometime in 1968 he became "aware that FBA had some unregistered securities" (p. 13). He said he learned this fact in "discussions with the principals of Fleschner Becker and with Leonard Halpern" (pp. 13-14).

27. We attach as Exhibit 12 for the Court's information a list of unregistered securities purchased by FBA through September 30, 1970. We are informed that this list was prepared by FBA for purposes of this litigation at the request of our counsel. As the notation on it indicates, it was marked as Exhibit 1 during the deposition of Mr. Fleschner. It was identified by him as a document prepared in his office and at his direction (p. 31).

Defendants' Motions for Summary Judgment

28. The assertion that plaintiffs have no claim because they did not suffer damages: All defendants allege that our withdrawals from FBA far exceeded our capital contributions, and that we therefore made a profit and did not suffer damages. Counsel have advised that they will submit a memorandum of law to the Court which will demonstrate that the measure of damages in such an action as this is not what defendants allege, and that under the proper measure, it is demonstrable that our damages were enormous. Counsel advise that defendants' contention is legally incorrect. It is also factually incorrect. What defendants have overlooked is that we owned a limited partnership interest in FBA for more than five years. In some of those years, FBA earned substantial net income. Much of the money we withdrew must be considered income rather than return of capital. For example, in fiscal 196[illegible], FBA earned net income of nearly $5.5 million, according to the certified financial statements (Exhibit 3 hereto). Mrs. Abrahamson is claimed to have withdrawn approximately $57,000 on September 30, 1967. Her share of FBA's net income for the year ended September 30, 1967, however, was approximately $117,500 (see Exhibit 3 hereto). A further demonstration that it was primarily income being drawn upon, rather than capital, is found in the fact that FBA caused Goodkin to send limited partners periodic income information for tax purposes. Attached hereto as Exhibit 13 is a copy of a letter sent to Mrs. Abrahamson by Goodkin on July 31, 1967, estimating her share of the "partnership income" for the fiscal

year to that date. We respectfully urge that withdrawals of income earned in a limited partnership interest such as this should be treated as are dividends on stocks or interest on bonds. They should not be counted in determining the price received on the sale of a security.

29. The assertion that plaintiffs signed an agreement authorizing defendants to purchase securities of every kind for the partnership, and therefore cannot complain of the purchases of unregistered securities: Defendants point to language in the partnership agreements claiming that such language authorized the purchase of unregistered securities. Even if this is so, counsel advise that this fact is irrelevant, since our complaint herein alleges that defendants are liable, not for purchasing unregistered securities, but for failing to disclose such purchases. In any event there is some doubt whether purchases of the unregistered securities in the enormous amounts involved here were authorized. The Partnership Agreement dated October 1, 1968 (Exhibit C to Becker affidavit) provided that distributions to withdrawing partners "shall be made in cash or marketable securities or both . . . " (¶ 7.03; emphasis added). We believe that such vast investments in unregistered securities as those engaged in here were prohibited by this provision.

30. The assertion that plaintiffs are chargeable with constructive knowledge of the restricted nature of FBA's unregistered securities: Defendants claim that the books of FBA

contained notations wherever a security in the portfolio was unregistered, that plaintiffs had the right to look at the books, and that our cause of action is therefore barred. Counsel advise that the memorandum of law to be submitted herein will show that it is federal law, and not state law, which governs the allegations here, and that under the federal law applicable to actions under Rule 10b-5, where the partnership involved has 30 to 70 limited partners, the limited partners are not charged with constructive knowledge of the information in the partnership books. Counsel advise that such limited partners cannot be treated as "insiders." In any event, it should be noted that defendants have not described the information as to lack of registration which actually appeared in the books, and have thus failed to demonstrate that the notations were so clear that they would indeed have apprised us of the facts.

31. The assertion that defendants were not investment advisers: Counsel advise that the memorandum to be submitted will demonstrate that the defendants were investment advisers within the meaning of the Investment Advisers Act of 1940 as a matter of law. It is noteworthy, however, that reference is made to investment counselling in several of the partnership agreements. The agreement dated July 1, 1965 (Exhibit A to Becker affidavit) states that the General Partner [defendant Fleschner] had the power "to engage in the business of advising and counselling on investments . . ." (p. 4). The agreement dated April 1, 1966 (Exhibit B to Becker affidavit) contained identical language (p. 5).

32. The assertion of defendant Ehrlich that no wrongdoing occurred while he was a managing partner: Mr. Ehrlich states that he was a general partner only from October 1, 1968 to September 30, 1969. He states that he withdrew from management responsibilities as of July 24, 1969. He admits monthly reports such as those described above were sent to limited partners during the period when he was a general partner and had management responsibilities (Rule 9(g) Statement, ¶ 6). He denies having participated in the "preparation" of the certified financial statements for the year ended September 30, 1968, but does not deny that those financial statements were issued to the limited partners while he was a managing and general partner. It is plain that they were issued during Mr. Ehrlich's tenure. Defendant Goodkin states that it did not issue its opinion upon those statements until December 26, 1968 (Rule 9(g) Statement, ¶ 4); Mr. Ehrlich was a managing and general partner on this date. Moreover, it seems clear that even if Mr. Ehrlich did not "prepare" the statements, he certainly reviewed them. We have quoted above the testimony of Mr. Fleschner to the effect that general partners saw the annual financial statements and certifications before they were sent to limited partners. Mr. Becker confirmed this (Dep., pp. 13-14). Mr. Ehrlich participated in this process, according to the testimony of Mr. Fleschner. Mr. Fleschner stated that Mr. Ehrlich did not participate in the "preparation" of the financial statements for the year ended September 30, 1968 (p. 84). He was then asked whether Mr. Ehrlich participated "in the review" of these statements, and said, "I believe so" (p. 85). In any event, and even

if Mr. Ehrlich never even saw the 1968 financial statements, he must nevertheless bear responsibility for the monthly reports. It is conceded by Mr. Ehrlich that the monthly reports sent to limited partners during his tenure as a managing partner contained statements as to the percentage gain or loss of FBA's portfolio compared with the performance of the Standard and Poor's 500 Stock Average, but omitted any information about the extent to which FBA's portfolio consisted of unregistered securities. (See e.g., the monthly report dated February 3, 1969, Exhibit 10 hereto.)

33. The assertion of Goodkin that any failure to disclose material facts in its 1968 certified statements was not in connection with the purchase or sale of any security: Goodkin asserts that our last capital contribution was long before its issuance of the 1968 reports, and that our withdrawal was long after the issuance of that report. Goodkin therefore claims that any wrong done to us was not in connection with the purchase or sale of a security. Counsel advise that the memorandum to be submitted will demonstrate that a concealment of material facts which causes an investor to hold securities with the result that he later sells those securities at a price far less than he could have obtained at the time of the concealment constitutes a violation of Rule 10b-5, since it is done in connection with a sale. It should also be noted that we signed a new partnership agreement at about the same time Goodkin was disseminating the 1968 financial statements (Exhibit C to Becker affidavit). This might well be deemed the purchase of a security. We certainly would not have signed the new partnership agreement had we known the facts. Goodkin also claims that there is no evidence that Goodkin acted together with any of the other defendants in connection with the issuance of the 1968 certified statements which failed to disclose FBA's extensive investment in unregistered securities. In fact there is undisputed evidence

of concerted action. We have quoted above the testimony of Mr. Fleschner that the general partners, after examining Goodkin's drafts of the certified statements, did discuss matters of format with Goodkin. Mr. Becker also confimed that if the general partners "had any suggestions as to the format they would talk to Goodkin about it . . ." (p. 13). Mr. Taylor, a former partner of Goodkin, testified that he had a business relationship with "Malcolm Fleschner [and] Bill Becker" (Dep. p. 9), and discussed problems with them on occasion (p. 8). Mr. Halpern, also a former partner of Goodkin, testified that in performing his audits of FBA his "main contact" was with FBA's "internal controller" (p. 20). Mr. Halpern also testified that after a draft of the certified annual statements was prepared, Mr. Taylor would "discuss the report" with the "general partners of FBA" (pp. 30-31).

Plaintiffs' Motion for Summary Judgment

34. The defendants do not deny that, in the period September 30, 1966 through September 30, 1969, they mailed us certified financial statements, monthly reports and periodic letters containing tax information (see e.g. Exhibit 13 hereto) in which statements were made concerning FBA's assets, net worth, position and performance. Defendants do not deny that FBA began to invest in unregistered securities in early 1967, and increased its investment in unregistered securities thereafter. They do not deny that the investment in unregistered securities constituted approximately 15% of FBA's portfolio at the close of fiscal 1967 that it constituted approximately 72% of FBA's

portfolio at the clost of fiscal 1968, and that it reached approximately 95% of the portfolio during fiscal 1969. Defendants nowhere claim that we had actual knowledge from any source that so extensive an investment in unregistered securities was being made, until our receipt of the fiscal 1969 financial statements certified by Brach Lane Hariton & Hirschberg.

35. We respectfully urge, and are advised that counsel's memorandum of law will show, that these acts as a matter of law constituted knowing omission to state material facts in connection with our sale of securities, i.e., our partnership interests*. It should also be noted that, although Goodkin refers only to its certification of the fiscal 1968 statements, the fact is that Goodkin "up dated and balanced out" the books of FBA "on a monthly basis," according to the testimony of Mr. Halpern (p. 25). He called these procedures "interim audits" (p. 25). Mr. Taylor confirmed that Mr. Halpern worked on the FBA account "all year round" (p. 9). Goodkin was therefore aware of the extent of FBA's investment in unregistered securities at all times, just as the general partners were.

36. We are advised that our damages should be calculated on the basis of a comparison between the value we could have obtained for our investments had we been informed of the facts in time to withdraw as of September 30, 1968, and the

---

* Even if it is held that these ommissions were not in connection with the purchase or sale of a security, we ask that summary judgment be granted upon our claim under Section 206 of the Investment Advisers Act of 1940; counsel advise that this claim does not require proof of any such purchase or sale.

value we actually received when we did withdraw after learning the facts. These values are matters of record. The value of our investments as of September 30, 1968 is contained in the certified financials as of that date, which are endorsed by all defendants. The value of our investments as of our withdrawal effective September 30, 1970 was paid to us in cash, and is therefore fixed. The difference between the two figures is $454,979 in the case of Robert Abrahamson, and $799,821 in the case of Marjorie Abrahamson. Should the Court conclude that there is a triable issue of fact as to damages, we nevertheless request that summary judgment be granted to us on the issue of liability.

Conclusion

For the reasons stated above and in the accompanying memorandum of law, it is respectfully requested that defendants' motions for summary judgment be denied, and that our motion for summary judgment be granted.

Robert Abrahamson

Marjorie Abrahamson

Sworn to before me this
11th day of March, 1974.

DOROTHY BROOKS
Notary Public, State of New York
No. 03-5164426
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1974

EXHIBITS TO PLAINTIFFS' AFFIDAVIT

Fleschner Deposition Testimony

suggested if they wanted to do what I and the members of my family were doing that I would be pleased to include them.

Q And did you, in fact, put your money and that of your family into A. W. Jones?

A We loaned it to them.

Q Loaned it to them?

A Yes.

Q And did the Abrahamsons loan their money to A. W. Jones after this conversation?

A Yes.

Q And for how long was your money and their money on loan with A. W. Jones?

A I think about six months.

Q Do you recall any time subsequent to this occasion in late 1964 when you again discussed A. W. Jones or mentioned A. W. Jones to the Abrahamsons?

A Some time subsequently I told them that I had decided that I didn't want to become a limited partner of A. W. Jones, that I was going to set up a family investment partnership for myself and members of my family.

Q Before you go on, let me just get the time and place. When was it that you had this conversation?

A The late spring or early summer of 1965.

SALLY SHELKIN, C.S.R.

Q And where was it?

A At their home.

Q Their home?

A Yes.

Q Who was present?

A Bob and Marge Abrahamson.

Q And can you tell us, as best you can, what you said and what they said on that occasion?

A That I was going to run a family investment partnership, that there would be a few friends who used me as their broker in the past and that I would be in the business of investing their money the same way as I would invest my family's money.

Q What was said about A. W. Jones on this occasion?

A I said that I decided not to become a limited partner of A. W. Jones and not to leave my money with them but to invest it for my own account and members of my family.

Q Did you suggest to them in any way that the family partnership you were going to start was going to be like A. W. Jones?

A I couldn't possibly. I don't know what A. W. Jones was. I told them that I might use some of the techniques that A. W. Jones used.

Q How much money did you loan to A. W. Jones when you loaned the money in 1964?

SALLY SHELKIN, C.S.R.

A Oh, I don't remember.

Q Can you recall approximately?

A Well, I can recall approximately for the members of my immediate family that it was somewhere in the neighborhood of a million or a million and a half dollars.

Q And that was for yourself and your family?

A Immediate family, yes.

Q Well, you knew something about A. W. Jones at the time, didn't you?

MR. GRAHAM: I object to the form of the question.

MR. ALENSTEIN: Is he directed not to answer?

MR. GRAHAM: No, he may answer.

A What does "something" mean, counselor?

Q You knew it was a private partnership?

A Yes.

Q You knew, I take it, that it invested money for its partners?

A Yes.

Q And you knew some of the techniques it used?

A Yes.

Q And what techniques had it used that you knew about?

A It bought securities and it sold securities short and made various investments.

SALLY SHELKIN, C.S.R.

Q Going back now to this conversation in the late spring or early summer of 1965, I think you said you told the Abrahamsons that your proposed family partnership might use some of the same techniques as A. W. Jones used.

A Yes.

Q And did you identify any of those techniques?

A Yes.

Q What did you say on that subject?

A That I would be more likely to be shorting securities than I had in the past.

Q Did you tell them why you would be more likely to do that?

A Because I thought it was an appropriate way of investing money from time to time.

Q Did you say anything to them about protection in the face of a falling market?

A I said to them that if you were short the right kinds of stock in a declining market you would make money on the short side; that if you had long stocks at the same time you would lose money on the long side.

Q Do you recall ever having in your possession any document which describes A. W. Jones and his operations?

A Yes.

SALLY SHELKIN, C.S.R.

Q What was the document called, if you can recall?

A I don't know what it was called. I don't know if it was called anything.

Q It was not a prospectus, I take it.

A Not a prospectus, as I understand it.

Q Was it some sort of a brochure?

A It was a brochure.

Q Did you show that to the Abrahamsons?

A I did.

Q Was it on that occasion?

A No.

Q When was it that you did?

A In late '64.

Q Did you leave it with them?

A Yes.

Q Did you ever get it back from them?

A Yes.

Q About how long after you left it with them?

A Several weeks.

Q Do you know where it is now?

A No.

Q You don't possess it?

A No.

SALLY SHELKIN, C.S.R.

Q Do you recall anything about what it said concerning the operations of A. W. Jones?

A Yes.

Q What do you recall about that?

A It described a method of investing in securities of long and short, and also had a summation of the results that they had achieved for years prior to the year under discussion.

Q Going back to the conversation you had with the Abrahamsons in the late spring or early summer of 1965, have you now told me everything that you can recall about what was said in that conversation?

A I think so.

Q About how long did that conversation take?

A Half an hour, maybe three-quarters of an hour -- 25 minute It was not an interminable discussion.

Q Do you have any recollection of either of the Abrahamsons saying anything about their fearing a depression or a recession?

A Yes.

Q Who do you recall saying that?

A Marjorie Abrahamson.

Q And what did she say, as best you can remember?

A She remembered the '29 depresaion -- as did I -- and that

SALLY SHELKIN, C.S.R.

it was a terrible time.

Q In what connection did she say that, if you can remember?

A That she was a poor girl and she remembered the depression and it was a difficult time for lots of people.

Q What I am really getting at is did she say this in connection with any stated desire on her part for financial security?

A She frequently referred to the need for financial security -- as did most people.

Q She did refer to it?

A Frequently referred to the need for financial security.

Q And did so on the occasion of that meeting?

MR. GRAHAM: I object to the form of the question.

MR. ALENSTEIN: Well, I am asking whether she did.

A I don't remember any discussion at that meeting describing her financial security in relation to the '29 depression.

Q I will show you copies of three letters which appear to be from Marjorie Abrahamson to you and will just ask if you can confirm if that is what they are?

MR. ALENSTEIN: Mr. Graham, this is also material that was supplied by Mr. Carlton.

A Yes.

SALLY SHELKIN, C.S.R.

Q You recall receiving them?

A Yes.

MR. ALENSTEIN: Let's mark these for identification.

MR. JEFFERS: May I see them, please.

MR. ALENSTEIN: Sure. (Handing)

Mark them Plaintiffs' (Fleschner) Exhibits 2, 3 and 4.

(Letter dated October 21, 1965 marked Plaintiffs' (Fleschner) Exhibit 2 for identification, this date)

(Letter dated September 19, 1966 marked Plaintiffs' (Fleschner) Exhibit 3 for identification, this date)

(Letter dated August 25, 1967, marked Plaintiffs' (Fleschner) Exhibit 4 for identification, this date)

Q Mr. Fleschner, do you recall receiving any other letters from Marjorie Abrahamson of a nature which is similar to Exhibits 2, 3 and 4?

A No.

Q Going back for a moment to what you recall about that brochure of A. W. Jones, I think you said that it contained, as best you can recollect, some performance figures for prior years.

SALLY SHELKIN, C.S.R.

A Correct.

Q And do you recall about how many years back it showed?

A Maybe ten or 15.

Q Well, it would have included, for example, '61, '62 and '63?

A I am not sure it included '63.

Q You were in the security business in 1962, weren't you?

A 1962, yes.

Q That was a bad year, wasn't it -- wasn't there a declining market in '62?

MR. GRAHAM: I object to the form of the question. You may answer it.

THE WITNESS: Which question am I supposed to answer

MR. GRAHAM: My objection was because it was compound.

MR. ALENSTEIN: I will rephrase it.

Q Wasn't there a sharp fall in the market in 1962?

A Yes.

Q And do you recall how A. W. Jones had done in that market as shown by their brochure?

A I think for the fiscal year ending some time around May,

SALLY SHELKIN, C.S.R.

'62 they had shown a modest loss.

Q Less than the general losses in the market?

MR. GRAHAM: I object to the form of that question.

A I don't know. That is a difficult question to answer. For example, I don't know whether they had shown an enormous profit in the early part of the year and lost it all in the latter part of the year. I didn't see any monthly figures of their performance. I remember seeing the final figure for the year.

Q Did you have any discussion with the Abrahamsons about the performance of A. W. Jones in the market that existed in '62?

A Only insofar as it indicated in the brochure that they had not lost any money for the fiscal year ending, I believe it was May 1962.

Q And that fact was mentioned in that conversation with the Abrahamsons?

A I believe so.

Q Did the Fleschner Company ever invest in any unregistered securities?

A No.

Q Where was the Fleschner Company's offices?

A Partly in Westport, Connecticut and partly in my

SALLY SHELKIN, C.S.R.

HARRY GOODKIN & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
115 BROADWAY
NEW YORK, N.Y. 10006

Mr. Robert Abrahamson
Deep Valley Road at Riverbank
Stamford, Connecticut

CONFIDENTIAL

PLEASE DO NOT FOLD

Envelope, H. Goodkin to R. Abrahamson

182a

Fleschner Becker Assoc. Statement of Financial Condition, 9-30-67

FLESCHNER BECKER ASSOCIATES

STATEMENT OF FINANCIAL CONDITION

as at

SEPTEMBER 30, 1967

Dft's Exhibit
4-14-71
55

HARRY GOODKIN & COMPANY
Certified Public Accountants
ONE CHASE MANHATTAN PLAZA
NEW YORK, N.Y. 10005

HARRY GOODKIN & COMPANY
Certified Public Accountants

PHILIP P. GOODKIN, C. P. A.
HOWARD D. TAYLOR, C. P. A.
DANIEL GOODKIN, C. P. A.
EDWIN E. JEDEIKIN, C. P. A.
DORIAN H. GOLDSTEIN, C. P. A.
STANLEY A. ROSS, C. P. A.
CHARLES H. MANDELL, C. P. A.

115 BROADWAY · NEW YORK, N. Y. 10006
TELEPHONE 212 BA 7-7300

HARRY GOODKIN, C. P. A. (1925-1960)

December 15, 1967

Fleschner Becker Associates
330 Madison Avenue
New York, N. Y. 10017

Dear Mesdames and Sirs:

We have examined the balance sheet of Fleschner Becker Associates as at September 30, 1967, and the related statement of income and expense for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Cash deposits were confirmed by direct correspondence with depositaries. The investment in marketable securities and put and call options are shown at cost and at market value as of the balance sheet date and was confirmed by direct correspondence with the various custodians. Notes payable to the banks and securities held as collateral by them were confirmed by direct correspondence. Notes payable to others and advances by new partners as of October 1, 1967 were confirmed. The unrealized increase in market value of securities held for investment is set forth on the balance sheet of the partnership but is not reflected in the income statement which gives effect to income and losses only when realized.

Dividend and bond interest income was independently verified by us and the net gain on sale of securities was computed by us. All items of general and administrative expenses were found to be properly classified.

Fleschner Becker Associates maintains its books of account on an accrual basis of accounting which meets the requirements of the firm, and the accompanying financial statements have been accordingly prepared on the same basis.

In our opinion, the accompanying balance sheet and related statement of income and expense present fairly the financial position of Fleschner Becker Associates at September 30, 1967, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

Respectfully submitted,

Harry Goodkin & Company

Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

—oOo—

REPORT OF SEPTEMBER 30, 1967

STATEMENT OF FINANCIAL CONDITION AS AT SEPTEMBER 30, 1967.....	-	STATEMENT "A"
STATEMENT OF INCOME AND EXPENSE FOR THE YEAR ENDED SEPTEMBER 30, 1967...	-	STATEMENT "B"
STATEMENT OF REALIZATION OF PRIOR PERIODS UNREALIZED GAIN OR LOSS DURING THE YEAR ENDED SEPTEMBER 30, 1967.....	-	STATEMENT "C"
SCHEDULE OF PARTNER'S CAPITAL ACCOUNT AS AT SEPTEMBER 30, 1967.....	-	SCHEDULE "A"

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

—-oOo—

STATEMENT "A"

STATEMENT OF FINANCIAL CONDITION
AS AT SEPTEMBER 30, 1967

Cost or Value Carried At	Particulars	Market Value September 30, 1967
	ASSETS:	
$ 358,370.63	Cash on Deposit and on Hand	$ 358,370.63
2,170,041.59	Net Amount Due from Various Brokers	2,170,041.59
12,521,860.00	Funds on Deposit Held as Collateral Against Stock Borrowed	12,521,860.00
291,282.35	Income Receivable	291,282.35
	Investment in Certificates of Deposit and Short Term Federal Obligations - Due in Less Than One Year	
2,377,349.45	At Various Brokers	2,376,974.44
5,282,207.81	Held as Collateral Against Stock Borrowed	5,279,228.13
24,538,543.92	Investment in Securities and Put and Call Options	28,754,652.30
61,947.50	Prepaid Expenses	61,947.50
15,380.46	Furniture, Fixtures and Equipment - Net of Depreciation	15,380.46
$47,616,983.71	TOTAL ASSETS	$51,829,737.40
	LIABILITIES:	
$19,993,200.35	Securities Short and Proceeds on Unexpired Put and Call Options Sold	$20,999,508.38
13,510,473.06	Notes Payable to Banks - Secured	13,510,473.06
882,193.68	Notes Payable to Others - Unsecured	882,193.68
298,522.11	Advances from New Partners as of October 1, 1967	298,522.11
170,368.73	Accrued Expenses and Taxes Payable	170,368.73
$34,854,757.93	TOTAL LIABILITIES	$35,861,065.96
$12,762,225.78	NET WORTH	$15,968,671.44

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

—oOo—

STATEMENT "B"

STATEMENT OF INCOME AND EXPENSES FOR
FOR THE YEAR ENDED SEPTEMBER 30, 1967

ORDINARY INCOME:		
Dividends	$ 86,313.80	
Bond Interest	583,888.52	
Net Income Realized on Sale of Options - Expired.	81,437.50	
Interest Income from Brokers	22,381.94	
TOTAL INCOME		$ 874,021.76
Less: Expenses:		
Interest Expense	$ 735,439.81	1075
Dividends on Short Sales	93,597.50	901
Fee on Borrowed Stock	71,800.38	174
Custody Fee	1,590.21	
Financial Services	4,975.85	
Ticker Expense	7,177.09	
Payroll	51,482.00	
Taxes	2,637.65	
Legal and Accounting	65,391.79	
Rent	12,462.33	
Utilities	5,485.77	
Office Stationery and Supplies	5,125.63	
Insurance	1,371.80	
Travel and Entertaining	5,218.26	
Depreciation	5,958.63	
Miscellaneous Expenses	6,057.06	
TOTAL EXPENSES		1,075,771.76
NET ORDINARY LOSS		$ (201,750.00)
REALIZED CAPITAL GAINS:		
Net Profit on Sale of Securities - Short Term	$1,498,069.78	
Net Profit on Sale of Securities - Long Term	4,145,576.90	
TOTAL REALIZED CAPITAL GAINS		5,643,646.68
NET INCOME FOR THE YEAR ENDED SEPTEMBER 30, 1967		$5,441,896.68

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

—oOo—

STATEMENT "C"

STATEMENT OF REALIZATION OF PRIOR PERIODS UNREALIZED GAIN OR LOSS DURING THE YEAR ENDED SEPTEMBER 30, 1967

	July 1, 1965 to Mar. 31, 1966	April 1, 1966 to Sep. 30, 1966
Net Ordinary Income	$	$ 86,425.00
Net Profit or Loss on Sale of Securities - Short Term		(431,483.15)
Net Profit or Loss on Sale of Securities - Long Term	74,900.00	(145,977.29)
TOTAL REALIZED	$74,900.00	$(491,035.44)

HARRY GOODKIN & COMPANY
Certified Public Accountants

Fleschner Becker Assoc. Accountant's Report 9-30-68

FLESCHNER BECKER ASSOCIATES

—oOo—

SCHEDULE "A"

SCHEDULE OF PARTNER'S CAPITAL
ACCOUNT AS AT SEPTEMBER 30, 1967

Name of Partner MARJORIE ABRAHAMSON

These figures are not to be used for Income Tax purposes. A separate schedule will be forwarded to you indicating the amounts to be used by you for your 1967 Income Tax Return.

	Your Interest	
Opening Capital Account October 1, 1966 (2.8783 % of Capital as of that date).....	$ 208,024.33	
Add:		
Share of Net Income.....	$ 117,614.36	*
Unrealized Gain in Securities for the Period October 1, 1966 to September 30, 1967.....	91,133.02	
Share of Charges made on Cash Contributed by Partners...	517.95	
Net Interest Earned on Balances not Withdrawn.....	43.05	
Net Credits to Drawing Account.....	-	
Total Additions.....	$ 209,308.38	
Deduct:		
Net Charges to Drawing Account.....	$ 57,015.70	
Net Interest Charged on Withdrawals.....	-	
Total Deductions.....	$ 57,015.70	
Closing Capital Account September 30, 1967.....	$ 360,317.06	**

* Reduced by 20% Allocation to General Partners.

** Includes Unrealized Gains which are Subject to a 20% Charge in the Amount of $ 18,226.60 .

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

ACCOUNTANT'S REPORT

as at

September 30, 1968

DFS Exhibit
4-14-71

HARRY GOODKIN & COMPANY
Certified Public Accountants
115 BROADWAY
NEW YORK, N. Y. 10006

HARRY GOODKIN & COMPANY
Certified Public Accountants

PHILIP P. GOODKIN, C.P.A.
HOWARD [illegible], C.P.A.
DANIEL GOODKIN, C.P.A.
EDWIN E. JEDEIKIN, C.P.A.
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STANLEY A. ROSS, C.P.A.
LEONARD J. HALPERN, C.P.A.
CHARLES H. MANDELL, C.P.A.

115 BROADWAY · NEW YORK, N. Y. 10006
TELEPHONE 212 BA 7-7300

HARRY GOODKIN, C.P.A. (1925-1960)

December 26, 1968

Fleschner Becker Associates
330 Madison Avenue
New York, N. Y. 10017

Dear Mesdames and Sirs:

We have examined the statement of financial condition of Fleschner Becker Associates as at September 30, 1968, and the related statements of net worth and income and expense for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

Cash deposits were confirmed by direct correspondence with depositaries. The investment in securities, put and call options, and oil leaseholds are shown at cost and at market value and were confirmed by direct correspondence with the various custodians. Notes payable to the banks and securities held as collateral by them were confirmed by direct correspondence. Notes payable to others and advances by new partners as of October 1, 1968 were confirmed. The unrealized increase in market value of securities held for investment is set forth on the statement of financial condition of the partnership but is not reflected in the statement of income and expense which gives effect to income and losses only when realized.

Dividends and bond interest income were independently verified by us and the net gain on sale of securities and the income realized on sale of options (expired) were computed by us. All items of general and administrative expenses were found to be properly classified. Intangible oil drilling costs were written off.

Fleschner Becker Associates maintains its books of account on an accrual basis of accounting which meets the requirements of the firm, and the accompanying financial statements have been accordingly prepared on the same basis.

In our opinion, the accompanying statement of financial condition and related statements of net worth and income and expense present fairly the financial position of Fleschner Becker Associates at September 30, 1968, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

Respectfully submitted,

Harry Goodkin & Company

Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

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REPORT OF SEPTEMBER 30, 1968

STATEMENT OF FINANCIAL CONDITION AS AT SEPTEMBER 30, 1968..... - STATEMENT "A"

STATEMENT OF NET WORTH AS AT SEPTEMBER 30, 1968..... - STATEMENT "B"

STATEMENT OF INCOME AND EXPENSE FOR THE YEAR ENDED SEPTEMBER 30, 1968... - STATEMENT "C"

STATEMENT OF UNREALIZED NET GAINS AS AT SEPTEMBER 30, 1968..... - STATEMENT "D"

SCHEDULE OF PARTNER'S CAPITAL ACCOUNT AS AT SEPTEMBER 30, 1968..... - SCHEDULE "A"

LARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

---oOo---

STATEMENT "A"

STATEMENT OF FINANCIAL CONDITION
AS AT SEPTEMBER 30, 1968

ASSETS:		
Cash:		
At Banks and on Hand	$ 1,529,274.14	
Net Amounts Due from Various Brokers	7,399,569.44	
On Deposit - Held as Collateral Against Stock Borrowed	633,482.69	$ 9,562,326.27
Investments:		
Certificates of Deposit and Short-Term Federal Obligations - Due in Less than One Year		
At Various Brokers, at Market (Cost $6,956,236.68)	$ 6,958,494.69	
Held as Collateral Against Stock Borrowed, at Market (Cost $4,561,778.65)	4,561,321.87	
Securities, and Put and Call Options, at Market (Cost $19,074,768.44)	34,503,701.73	
Oil Leaseholds, at Market (Cost $482,452.95)	1,250,000.00	47,273,518.29
Note Receivable - Due in Less Than One Year		2,000,000.00
Other Assets:		
Income Receivable	$ 301,506.65	
Sundry Receivables	175,643.77	
Prepaid Expenses	34,999.36	
Furniture, Fixtures and Equipment - Net of Depreciation	13,697.89	525,847.67
TOTAL ASSETS		$59,361,692.23
LIABILITIES:		
Securities Short and Proceeds on Unexpired Put and Call Options Sold, at Market (Proceeds $16,522,915.30)	$15,825,701.55	
Notes Payable to Banks - Secured	7,098,826.39	
Notes Payable to Others - Unsecured	545,000.00	
Accrued Expenses and Taxes Payable	765,248.48	
Due to Partners	739,527.20	
Amount due to Withdrawn Partners	1,393,266.00	
Advances from New Partners as of October 1, 1968	2,000,000.00	
TOTAL LIABILITIES		29,367,569.62
NET WORTH		$29,994,122.61

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

---oOo---

STATEMENT "B"

STATEMENT OF NET WORTH
AS AT SEPTEMBER 30 1968

Net Worth as at October 1, 1967		$15,968,671.44
Add:		
Contributions to Capital, Net of Withdrawals as at October 1, 1967		1,209,865.48
Net Worth, As Adjusted - October 1, 1967		$17,178,536.92
Charges on Contributions To, and Withdrawals of Capital		35,260.07
Total		$17,213,796.99
Add:		
Net Realized Income for the Year Ended September 30, 1968	$ 393,093.99	
Net Unrealized Gains for the Year Ended September 30, 1968	15,818,745.32	
Total Net Realized Income and Net Unrealized Gains for the Year Ended September 30, 1968.		16,211,839.31
Total		$33,425,636.30
Less:		
Withdrawals	$ 3,452,078.68	
Interest Earned on Balances Not Withdrawn in Accordance with Quarterly 4% Right of Withdrawal	20,564.99	3,431,513.69
NET WORTH AS AT SEPTEMBER 30, 1968		$29,994,122.61

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

---oOo---

STATEMENT "C"

STATEMENT OF INCOME AND EXPENSE
FOR THE YEAR ENDED SEPTEMBER 30, 1968

ORDINARY INCOME:		
Dividends	$ 26,131.96	
Bond Interest	961,507.28	
Income Realized on Sale of Options - Expired	1,013,641.02	
Interest Income From Brokers	18,135.65	
TOTAL INCOME		$2,019,415.91
LESS: EXPENSES:		
Interest Expense	$ 537,232.36	
Dividends on Short Sales	93,061.25	
Fee on Borrowed Stock	119,747.50	
Financial Services and Ticker Expense	10,414.89	
Custody Fee and Clearance Charges	6,519.66	
Payroll	71,640.00	
Taxes	2,572.86	
Legal	109,198.29	
Accounting	50,000.00	
Rent	12,500.01	
Utilities	5,842.54	
Office Expense	19,593.31	
Insurance	1,476.37	
Travel and Entertainment	15,080.35	
Depreciation	5,391.90	
TOTAL EXPENSES		1,060,271.29
NET OPERATING INCOME		$ 959,144.62
INTANGIBLE OIL DRILLING COSTS WRITTEN OFF		1,174,847.42
NET ORDINARY LOSS		$ (215,702.80)
REALIZED CAPITAL GAINS AND LOSSES:		
Net Gains on Sale of Securities - Long Term	$ 922,928.55	
Net Losses on Sale of Securities - Short Term	(314,131.76)	
TOTAL REALIZED NET CAPITAL GAINS		608,796.79
NET REALIZED INCOME FOR THE YEAR ENDED SEPTEMBER 30, 1968		$ 393,093.99*

* Does not include Unrealized Net Gains for the year ended September 30, 1968, in the amount of $15,818,745.32.

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

---oOo---

STATEMENT "D"

STATEMENT OF UNREALIZED NET GAINS
AS AT SEPTEMBER 30, 1968

	Partnership Period			
	Apr. 1, 1966 to Sep. 30, 1966	Oct. 1, 1966 to Sep. 30, 1967	Oct. 1, 1967 to Sep. 30, 1968	Total
Unrealized Net Gains or Losses as at October 1, 1967.....	$(3,085.84)	$ 3,206,445.66	$ -	$ 3,203,359.82
Less:				
Portion of above Realized in the Year Ended September 30, 1968	(3,085.84)	3,129,695.66	-	3,126,609.82
BALANCE.....	$ -	$ 76,750.00	$ -	$ 76,750.00
Add:				
Unrealized Net Gains for the Year Ended September 30, 1968.....	-	-	15,818,745.32	15,818,745.32
TOTAL UNREALIZED NET GAINS AS AT SEPTEMBER 30, 1968.....	$ -	$ 76,750.00	$15,818,745.32	$15,895,495.32

HARRY GOODKIN & COMPANY
Certified Public Accountants

FLESCHNER BECKER ASSOCIATES

---oOo---

SCHEDULE "A"

SCHEDULE OF PARTNER'S CAPITAL
ACCOUNT AS AT SEPTEMBER 30, 1968

Name of Partner Marjorie Abraham on

These figures are not to be used for Income Tax purposes. A separate schedule will be forwarded to you indicating the amounts to be used by you for your 1968 Income Tax Return.

	Your Interest	
Opening Capital Account on October 1, 1967 (3.6509 % of Capital as of that date)	$27,164.19	
Less: 20% allocation to General Partners of Gains Realized this year which were previously included as Unrealized Gains in Opening Capital	17,569.88	
Sub Total	$ 609,594.31	
Add:		
Share of this year's Net Income	$ 9,906.24	*
Unrealized Gain in Securities for the Period October 1, 1967 to September 30, 1968	577,520.11	
Share of Charges made on Cash Contributed by Partners	1,267.31	
Net Interest Earned on Balances not Withdrawn	1,078.17	
Net Credits to Drawing Account	-	
Total Additions	$ 589,791.83	
Deduct:		
Net Charges to Drawing Account	$ 58,000.00	
Net Interest Charged on Withdrawals	-	
Total Deductions	$ 58,000.00	
Closing Capital Account - September 30, 1968	$1,141,386.14	**

* Reduced by 20% Allocation to General Partners.

** Includes Unrealized Gains which are Subject to a 20% Charge in the Amount of $ 115,940.30 .

HARRY GOODKIN & COMPANY
Certified Public Accountants

198a

November 2, 1967 Memo re FBA loss

Fleschner
Becker
Associates

November 2, 1967

For the fiscal year to date we have lost 6% as compared to a 3% decline in the STANDARD AND POOR'S 500 STOCK AVERAGE.

We continue to maintain a low risk stance.

Bfts 4s 11-L hold
4-14-3s

199a

December 1, 1967 Memo re FBA loss

Fleschner
Becker
Associates

December 1, 1967

For the fiscal year to date we have lost 2% as compared to a like decline in the Standard & Poor's 500 Stock Average. We remain in a most conservative posture.

Our audit should be completed by December 15th. If you require tax information prior to that date please call Mr. Howard Taylor, Senior Partner of H. Goodkin & Co., 115 Broadway, New York City, at BA 7-7300.

330 Madison Avenue New York City 10017 986-2092

200a

February 2, 1968 Memo re FBA gain

Fleschner
Becker
Associates

February 2, 1968

For the fiscal year to date we have gained 19% as compared to a 5% decline in the Standard & Poor's 500 Stock Average. We have maintained the previously mentioned low risk stance through the current market weakness.

1,003,767
+.09
90,339.03

1,003,767
90,340
1,000,007 Treasurer's gain

230 Madison Avenue New York City 10017 986-2932

201a

April 2, 1968 Memo re FBA gain

Fleschner
Becker
Associates

April 2, 1968

For the fiscal year to date we have gained 8%* as compared to a 7% decline in the Standard & Poor's 500 Stock Average.

Our investment posture remains most conservative.

(*May 24th-68)

330 Madison Avenue New York City 10017 986-2992

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Fleschner Becker Assoc. Memo: 1968 Year-End Report

202a

Fleschner
Becker
Associates

Sept 30 '68

1968 YEAR END REPORT

For the 1968 fiscal year Fleschner Becker Associates increased its capital by approximately 90% as compared to a 6% gain in the Standard & Poor's 500 Stock Average.

It was another good year.

250 Madison Avenue New York City 10017 686-2585

2/3/69

Fleschner
Becker
Associates

Since October 1 we have gained 26% as compared to no change in the Standard & Poor's 500 Stock Average.

320 Madison Avenue New York City 10017 686-2992

203a

February 3, 1969 Memo re FBA gain

FBA Financial Statement for Dr. R. Abrahamson

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

FINANCIAL STATEMENTS

FOR: Dr. Robert Abrahamson

SEPTEMBER 30, 1969

D/S & GOLD
4-14-71
SJ

BRACH LANE HARITON & HIRSHBERG
CERTIFIED PUBLIC ACCOUNTANTS

BRACH LANE HARLTON & HIRSHBERG

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

SEPTEMBER 30, 1969

I N D E X

Statement of Financial Condition
As at September 30, 1969

Statement of Operations
For the Year Ended September 30, 1969

Statement of Partners' Capital
For the Year Ended September 30, 1969

Notes to Financial Statements

Schedule of Partner's Equity
For the Year Ended September 30, 1969

BRACH LANE HARITON & HIRSHBERG
CERTIFIED PUBLIC ACCOUNTANTS

1790 Broadway, New York, N.Y. 10019

December 19, 1969

To the Partners of
Fleschner Becker Associates
(A Limited Partnership)

We have examined the statement of financial condition of Fleschner Becker Associates (A Limited Partnership) as at September 30, 1969 and the related statements of operations and partners' capital for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances including confirmation of cash and securities.

In our opinion, the accompanying statement of financial condition and the related statements of operations and partners' capital present fairly the financial position of Fleschner Becker Associates (A Limited Partnership) at September 30, 1969, and the results of its operations and changes in partners' capital for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Brach Lane Hariton & Hirshberg

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

STATEMENT OF FINANCIAL CONDITION

SEPTEMBER 30, 1969

ASSETS

Investments, at value (cost $42,128,210) (Notes 1 and 2)	$39,355,310
Short-term bank obligations, held as collateral, at cost which approximates market	10,935,000
Cash in banks	233,437
Due from brokers	300,561
Accrued interest	644,237
Other assets	279,450
TOTAL ASSETS	$51,747,995

LIABILITIES AND PARTNERS' CAPITAL

Securities sold but not yet purchased, at value (net proceeds $9,919,484) (Note 1)	$10,699,324
Notes payable - banks (Note 1)	7,000,000
- others	3,996,871
Due to brokers	74,416
Accrued expenses	410,136
Total Liabilities	$22,180,747
Contingencies (Note 2)	
Partners' capital	29,567,248
TOTAL LIABILITIES AND PARTNERS' CAPITAL	$51,747,995

See accompanying notes to financial statements.

BRACH LANE HAMILTON & HIRSCHMAN

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

STATEMENT OF OPERATIONS

FOR THE YEAR ENDED SEPTEMBER 30, 1969

ORDINARY INCOME

Income		
Interest		$ 1,526,927
Net realized gains - put and call options		707,137
Dividends and other income		133,702
		$ 2,367,766
Operating Expenses		
Interest	$ 996,143	
Fees paid on borrowed stock	142,168	
Dividends	96,115	
Managing partners' salaries	83,333	
Administration expenses (Note 3)	352,415	1,670,174
		$ 697,592
Oil venture expenses		408,175
Net Ordinary Income Transferred to Partners' Capital		$ 289,417

REALIZED GAINS

Net realized gain on investments	$ 8,790,326
Less: Portion of above included in unrealized gains at the beginning of the year	7,059,791
Net Transferred to Partners' Capital	$ 1,730,535

UNREALIZED NET GAINS OR (LOSSES)

Unrealized net gains as of October 1, 1968		$ 15,835,495
Less: Realized on sales	$5,950,685	
Applicable to securities distributed to partners	1,109,106	7,059,791
		$ 8,835,704
Unrealized net (losses) for the year ended September 30, 1969 transferred to partners' capital		(12,388,444)
Unrealized Net (Losses) at September 30, 1969		$ (3,552,740)

See accompanying notes to financial statements.

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BEACH LANE HARITON & HIRSHBERG

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

STATEMENT OF PARTNERS' CAPITAL

FOR THE YEAR ENDED SEPTEMBER 30, 1969

Balance - October 1, 1968		$30,994,123
Additional capital contributed by existing and new partners as of October 1, 1968		13,965,800
Partners' capital - October 1, 1968 (as adjusted)		$43,959,923
Add: Net ordinary income	$ 288,417	
Net realized gain on investments (excluding unrealized gains at beginning of year realized during the year)	1,730,535	
Charges on partners' capital contributions	108,025	2,127,977
		$46,087,900
Less: Unrealized net (losses)	$(12,388,444)	
Capital withdrawals by partners	(4,132,208)	(16,520,652)
Partners' Capital - September 30, 1969		$29,567,248

See accompanying notes to financial statements.

BEACH LANE HARLTON & HIRSHBERG

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1969

Note 1 - Investments - Valuation and Other Matters

In accordance with Section 3.05 of the partnership agreement, securities which are listed on a national securities exchange have been valued at their last sale prices on September 30, 1969, or, if no sales occurred on that day, at the mean between the "bid" and "asked" prices on September 30, 1969. Securities which are not listed have been valued at their closing "bid" prices if held "long" and their closing "asked" prices if held "short". Securities which are in the form of put or call options have been valued at their fair market value. As further provided in Section 3.05, all other securities and property (including unregistered securities) have been assigned values determined by the managing partners.

The investments include:

	Cost	Value
Securities - traded on national exchanges or over-the-counter	$10,835,672	$ 7,275,722
Unregistered securities	30,592,639	30,411,868
Interests in oil ventures	699,899	1 667 720
Total	$42.128,210	$39.355.310

The notes payable to the bank are collateralized by a portion of the above securities.

Note 2 - Contingencies

(A) Litigation

The partnership is involved in an administrative proceeding before the Securities and Exchange Commission and three lawsuits, all of which are class

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1969

suits, which relate to short sales effected by the partnership during 1960 of common stock of Douglas Aircraft Company, Inc.

Counsel for the partnership advises that:

(1) No money damages are sought in The Securities and Exchange Commission proceeding and under presently prevailing interpretations of The Securities Exchange Act of 1934, it appears unlikely that any order entered therein by The Securities and Exchange Commission would have any material effect upon the partnership's business.

(2) None of the plaintiffs in the three lawsuits, who are claiming damages, appear to have been purchasers of Douglas stock during the period in question and, accordingly, it appears unlikely that there will be any recovery against the partnership in these suits.

(B) Contingent Liabilities

The partnership has guaranteed certain borrowings of entities whose securities are included in its portfolio of investments. The guaranteed borrowings aggregate $3,114,000 ($1,114,000 due January, 1970 and $2,000,000 due January 31, 1971). One of the guarantees is collateralized by securities held by the partnership with a value of approximately $1,000,000.

Note 3 - Administrative Contract

On July 1, 1969, the partnership entered into an agreement (renewable yearly commencing October 1, 1970) with Arctos Corporation (whose major stockholders are also managing partners of the partnership). Under the terms of the

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

NOTES TO FINANCIAL STATEMENTS

SEPTEMBER 30, 1969

agreement, Arctos agreed to (1) provide all services necessary to administer the partnership for a fee of (a) $82,500 for the period July 1, 1969 to September 30, 1969 and (b) an amount calculated at a rate of 1½% of the net asset value of the partnership up to $15 million and at a rate of 1% of the excess over $15 million as of the beginning of the first day of each fiscal year thereafter and (2) assume all obligations pertaining to the lease of general office space of the partnership at July 1, 1969.

The $82,500 fee for the period July 1, 1969 to September 30, 1969 is included in administrative expenses in the accompanying statement of operations.

Note 4 - Capital Changes Subsequent to September 30, 1969

As of October 1, 1969, the partnership received additional capital contributions of approximately $1,300,000 and agreed to pay to withdrawing partners their partnership interests of approximately $2,350,000.

BEACH LANE HAMILTON & HIRSHBERG

Schedule 1

FLESCHNER BECKER ASSOCIATES
(A LIMITED PARTNERSHIP)

SCHEDULE OF PARTNER'S EQUITY

YEAR ENDED SEPTEMBER 30, 1969

Name of Partner Dr. Robert Abrahamson

These figures are not to be used for Income Tax purposes. A separate schedule will be forwarded indicating the amounts to be used for your Income Tax Returns.

	Your Interest
Opening Capital Account on October 1, 1968 (1.376 % of Capital as of that date)	$ 605,076
Less: 20% allocation to General Partners of Gains Realized this year which were previously included as Unrealized Gains in Opening Capital	24,547
	$ 580,529
Add Current Year Credits:	
Net Income	$ 22,236
Charges made on Cash Contributed by Partners	1,487
	-0-
Total Additions	$ 23,723
Deduct Current Year Charges:	
Unrealized Loss in Securities for the Period October 1, 1968 to September 30, 1969	$ 170,465
Drawing Account	70,000
Interest Charged on Withdrawals	2,176
Total Deductions	$ 242,641
Closing Capital Account - September 30, 1969	$ 361,611

Worksheet, FBA private placements

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Prepared By | Date
Approved By |

FISCHMAN, SCHEER ASSOCIATES.
PRIVATE PLACEMENTS
INCEPTION 7/65 TO 9/30/70

	COMPANY	SECURITY	QUANTITY	DATE ACQUIRED	COST
1	Canyon Film Associates			1/68 - 8/69	40000
2					
3					
4					
5	Canyon Cinema	STOCK	7500	12/68	15000
6		WARRANTS	2500	12/68 8/69	2500
7					
8					
9					
10	Electric Hearing	STOCK	5000	4/69	100000
11			5% 2000		
12					
13	Saturday Evening Post	NOTE 4% 11/1/69	200000	1968	200000
14		PUT			
15					
16					
17	Steinman Sec.	PFD 5% STOCK	3500	1968	35000
18					
19					
20	Poster Film (Cadence)	WARRANTS	1500	1968	15000
21					
22					
23	Cyclax	NOTE	18350	1/69	18350
24		WARRANTS	7500	1/69	
25					
26	Int'l Nuclear (Intec)	STOCK	151400	2/68, 8/68	188500
27		STOCK	21750	2/68	171413
28		WARRANTS	10000	2/68	16587
29		STOCK	19760	10/68	25000
30		STOCK	6000	1968	8600
31		WARRANTS	41750	10/68	17500
32		WARRANTS	1500	1969	3600
33					
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Pltf's (Rieckhoff) Ex. 1 for Id.
7/6/72 - KB

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Approved By

FIEDELHEIT BECKER ASSOCIATES
PRIVATE PLACEMENTS
INCEPTION DATES TO 9/30/70

	COMPANY	SECURITY	QUANTITY	DATE ACQUIRED	COST
1	AMER. REALTY & PET. (AMSEP)	CONV. BOND 6% 2/1-87	200000	JULY 1967	200000
2					
3	LIQUIDONICS	CONV. NOTE 2% 6/1/77	250000	AUG 1967	250000
4					
5	PUBLISHERS CO.	WARRANTS	30000	AUG 1967	196500
6					
7	STATE FLIGHT	STOCK	15000	JULY 1967	675000
8					
9	ENERGY RESOURCES	STOCK	50000	AUG 1967	400000
10					
11	GORDON TECHNICAL SCIENCE	NOTE 6% 5/1-82	134000	6/68	134000
12		WARRANTS 5 YR	23375	6/68	
13		STOCK	3813	2/68-9/70	183447
14		WARRANTS 1 YR	5000	1/68-7/69	
15		NOTE	12500	6/70	12500
16		NOTE	15000	6/70	15000
17		NOTE 8% 6/1-82	15000	7/69	74183
18		WARRANTS 5 YR	3750	7/69	
19		NOTE 8% 11/1-82	20000	7/69	767684
20		WARRANTS 10 YR	1750	7/69	
21					
22					
23					
24	MOXIE	STOCK	136,000	7/68	240000
25					
26	NATIONAL RADIO	NOTE 6% 2/1-4		8/68	2000000
27		WARRANTS	151,000	2/68	
28					
29					
30	TRANS-LUX	STOCK	29000	5/68	1165250
31					
32	VOLS-INFORMATION SCIENCES	STOCK	25000	8/68	125000
33					
34	KANE MILLER	CONV. NOTE 6% 10/1-84	250000	12/67	250000
35			250000	11/67	250000
36					
37					
38					
39	AMERICAN HOMES	CONV. SUB 6% 10/1-88	40000	12/68	40000
40		WARRANTS	10000	12/68	
41					
42					
43					
44					

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Prepared By
Approved By

Florence Mercer Associates
Private Investments
Inception Date To 9/30/70

	Company	Security	Quantity	Date Acquired	Cost
1	Lone Cypress Petroleum	oil		10/68	$7,500
2					
3	Van Dyke	oil		1/69,	$20,000
4				7/70	$2,500
5					
6					
7	Muddy Petroleum & Lone Mountain	oil & gas		7/68 to 1/69	$191,605.55
8					
9	Eve Morgan Project	mineral		1969-1970	$7,768.-
10					
11					
12	Eve Daniel Project	mineral		1969	$1,000.-
13					
14					
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Prepared By | Date
Approved By

Re: FIRST LEADER ASSOCIATES
PRIVATE PLACEMENTS
INCEPTION 7/1/65 TO 9/30/70

	Company	Security			Quantity	Date Acquired	Cost
1	AMTEC	9% NOTE	6%	5/1/84	2,000,000	4/69	2,000,000
2							
3	Allied Devices	NOTE	6%	12/31/71	971,000	6/69	971,000
4		WARRANTS			337,520	6/69	
5		NOTE		7/1/74	111,500	11/70	111,500
6							
7							
8	Avco Diversified	STOCK			100,000	10/68	1,500,000
9					35,750	1/69	535,125
10							
11	Computer Dynamics	NOTE	5%	3/1/74	1,200,000	5/69	1,000,000
12		WARRANTS			132,500	5/69	
13							
14							
15	Dolly Madison	NOTE	6%	11/1/74	2,000,000	11/69	1,000,000
16		WARRANTS			210	11/69	
17							
18							
19	Florida Water & Utilities	STOCK			130,014	4/69	550,000
20							
21							
22	SFM	NOTE	5½%	11/1/74	1,500,000	10/68	1,500,000
23		WARRANTS			137,520	10/68	
24							
25							
26	Sibany	STOCK			32,500	10/68	65,000
27							
28							
29	TJI	STOCK			115,435	1/69	1,000,000
30		WARRANTS			20,000	1/69	
31							
32							
33	United Foods	NOTE	6%	12/31/69	1,500,000	4/69, 6/69	15,000
34		WARRANTS			40,000	4/69, 6/69	
35							
36							
37	California Metal	NOTE	6%	5/1/84	15,000	3/69	150,000
38		WARRANTS			15,000	3/69	
39							
40							
41							
42							
43							
44							

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Prepared By | Date
Approved By | Date

FLUSCHWER BERNAYS JESSELSON
PRIVATE PLACEMENTS
INVESTMENTS AS OF 9/30/70

	Company	Security		Quantity	Date Acquired	Cost
1	Long Island Lighting	Note	6 3/4	$ 1,500,000	1/67	1,500,000
2		Warrants		7500	1/67	
3		Note	6 3/4	1,500,000	9/67	1,331,550
4		Warrants		7500	9/67	662,585
5						
6						
7						
8						
9	America Ind	Note	6%	150,000	10/67	150,000
10						
11						
12						
13	City Investing	Note	6 3/4	2,000,000	11/67	2,000,000
14		Warrants		15,000	11/67	
15		Note	6 3/4	2,000,000	1/68	2,000,000
16		Warrants		10,000	1/68	
17						
18						
19						
20	Interstate Container	Conv. Note	4 1/2	2,000,000	10/67	2,000,000
21						
22						
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Letter 7-31-67, H. Goodkin to Mrs. Abrahamson

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B. JACOBS 10/27 19 71

HARRY GOODKIN & COMPANY
Certified Public Accountants

PHILIP P. GOODKIN, C. P. A.
HOWARD D. TAYLOR, C. P. A.
DANIEL GOODKIN, C. P. A.
EDWIN E. JEDEIKIN, C. P. A.
DORIAN H. GOLDSTEIN, C. P. A.
STANLEY A. ROSS, C. P. A.
CHARLES H. HANDELL, C. P. A.

ONE CHASE MANHATTAN PLAZA · NEW YORK, N. Y. 10005
TELEPHONE HA 5-2550

HARRY GOODKIN, C. P. A. (1925-1960)

July 31, 1967

Mrs. Marjorie Abrahamson
Deep Valley Road at Riverbank
Stamford, Connecticut

Re: Fleschner Becker Associates
330 Madison Avenue
New York, New York 10069

We have tentatively computed each partner's share of income and capital gains and losses. In the case of those partners who have contributed securities which the partnership subsequently sold, the amounts of capital gains and losses are separately stated.

	Ordinary Income or (Loss)	Short Term Gain or (Loss)	Long Term Gain or (Loss)
Your Proportionate Share of the Partnership Income or (Loss).....	$ 700.00	$ 4,100.00	$67,800.00
Your Share of Gains or (Losses) Realized on Securities Sold Which You Contributed to the Partnership.....			1,800.00
TOTALS	$ 700.00	$ 4,100.00	$69,600.00

Obviously, since the Partnership's fiscal year will not end until September 30, 1967, these amounts will probably change. We will advise you, prior to September 15, 1967, if there are significant changes to the above amounts. After the end of the fiscal year, you will receive definitive information needed in the preparation of your 1967 tax return.

Sincerely yours,

HARRY GOODKIN & COMPANY

Abrams Affidavit to Plaintiffs' Rule 9(g) Statement

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, et al,

Defendants.

- - - - - - - - - - - - - - - - - -x

AFFIDAVIT

73 Civ. 344: RLC

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

HENRY H. ABRAMS, being duly sworn deposes and says:

1. I am a certified public accountant and a principal in the firm of Schneider & Abrams, P.C., certified public accountants, 304 West 58th Street, New York, New York 10019. I am informed that the plaintiffs herein, Robert and Marjorie Abrahamson, are making a motion for summary judgment. I have been asked by their counsel to make this affidavit in support of that motion.

2. At the request of plaintiffs, conveyed to us through their counsel, my firm examined certain documents in an effort to determine the extent to which securities owned by Fleschner Becker Associates ("FBA") at certain times consisted of securities not registered with the Securities and Exchange Commission and subject to restrictions as to sale. The exam-

ination was done under my supervision, and the conclusions were reviewed and approved by me.

3. We used the following documents:

a. a summary statement entitled "Fleschner Becker Associates, unregistered securities, fiscal years ended September 30," which contains what we have assumed to be the FBA estimation of the fair value of its unregistered securities as at September 30, 1966, 1967 and 1968; a copy of this summary statement is annexed as Exhibit A;

b. financial statements of FBA prepared and certified by Harry Good.in & Co. for the fiscal years ended September 30, 1967 and September 30, 1968; I am advised that copies of these statements are annexed to the affidavit of Dr. and Mrs. Abrahamson as Exhibits 3 and 4;

c. a list of unregistered securities acquired by FBA entitled "Fleschner Becker Associates, private placements, inception 7/1/65 to 9/30/70"; I am advised that a copy of this document is annexed to the affidavit of Dr. and Mrs. Abrahamson as Exhibit 12;

d. the general ledger and securities ledger of FBA for the fiscal years ended September 30, 1967, 1968, 1969 and 1970;

e. worksheets of FBA showing the monthly valuations made by it of securities in its portfolio from December 31, 1968 through September 30, 1970 (the sheet for the month ended August 31, 1970 was missing).

4. I am informed by plaintiffs' counsel that the summary statement and the list of unregistered securities mentioned above were voluntarily supplied by FBA at the request of plaintiffs' counsel during pre-trial discovery in this case. The general ledger, securities ledger and monthly valuation worksheets mentioned above were made available by Sullivan & Cromwell, Esqs., attorneys for FBA. I am informed that this was done pursuant to the direction made by the Court upon application by plaintiffs' counsel. The statements by Harry Goodkin & Co. mentioned above belonged to plaintiffs.

5. The information which follows assumes the validity of the valuations of unregistered securities reflected in the documents we examined. In arriving at the information below, we did not include cash equivalents, oil leaseholds, short positions and options.

6. Our examination resulted in the following information showing unregistered securities as a percentage of total securities on the dates indicated:

Date	Total	Unregistered Securities	%
09/30/67	$28,754,652.	$ 4,319,487.	15.02
09/30/68	34,503,701.	24,867,189.	72.07
12/31/68	57,318,123.	54,635,859.	95.32
01/31/69	61,501,397.	57,895,572.	94.13
02/28/69	61,978,741.	49,258,057.	79.47
03/31/69	59,165,505.	48,354,986.	81.72
04/30/69	63,955,984.	55,045,554.	86.06
05/31/69	61,518,886.	55,113,936.	89.58
06/30/69	52,156,996.	47,850,059.	91.74
07/31/69	44,863,361.	41,174,812.	91.77
08/31/69	43,687,266.	43,004,561.	98.43
09/30/69	36,888,838.	35,053,871.	95.02

The figures for total investment as of September 30, 1967 and 1968 are taken from the statements prepared by Harry Goodkin & Co. The figures in both the total column and the unregistered securities column for January 31, 1969 are reduced by an unexplained reserve of $6,000,000. The figures in both such columns for September 30, 1969 include $4,677,001 in securities which became registered during the month.

7. We also concluded, on the same basis as that described above, that during the year ended September 30, 1970, unregistered securities ranged from approximately 75% to approximately 95% of the value of FBA's investments. In this year, value of FBA's investment in unregistered securities, according to its books, ranged from approximately $12,800,000 to approximately $35,000,000.

8. It appears that in the period fiscal 1967 through the end of fiscal 1970, FBA made approximately 80 separate purchases of unregistered securities, involving

securities of approximately 40 different issuers (see the list of unregistered securities, Exhibit 12 to Abrahamson affidavit).

Henry H. Abrams

Sworn to before me this

7 day of March, 1974.

Roger Gibbs - Notary Public

Commission expires March 30, 1974

Qual in N.Y. Co.

No 31-6506775

ONLY COPY AVAILABLE

Exhibit A to Abrams Affidavit

ONLY COPY AVAILABLE

FLEISCHMAN LATHAM ASSOCIATES
UNREGISTERED SECURITIES
FISCAL YEARS ENDED SEPTEMBER 30

1966	-0-
1967	$19,775
1968	$607,975

Affidavit of Ronald H. Alenstein, Esq. in Opposition to
Plaintiffs' Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, et al.,

Defendants.

71 Civ. 344 : RLC

AFFIDAVIT

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RONALD H. ALENSTEIN, being duly sworn, deposes and says:

1. I am a member of the firm of Shea Gould Climenko & Kramer, attorneys for plaintiffs. I make this affidavit in opposition to the motions of all defendants for summary judgment dismissing the complaint, which motion is presently returnable March 22, 1974.

2. Plaintiffs Robert Abrahamson and Marjorie Abrahamson have also moved for summary judgment and such motion has also been made returnable March 22, 1974. They seek a judgment against the defendants for the relief requested in the complaint. In support of their motion, they have presented and filed their own affidavit, sworn to March 11, 1974, and the affidavit of Henry H. Abrams, a certified public accountant, sworn to March 7, 1974.

3. The affidavits of plaintiffs and of Mr. Abrams deal with the matters raised by defendants' motions as well as with plaintiffs' motion. It is respectfully requested that these affidavits be read in opposition to defendants' motion as well as in support of plaintiffs' motion.

Ronald H. Alenstein

Sworn to before me this
12th day of March, 1974.

DOROTHY BROOKS
Notary Public, State of New York
No. 03-5454026
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1974

Affidavit of Dorian Goldstein in Opposition to Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES and HARRY GOODKIN & COMPANY,

Defendants.

71 Civ. 344 (RLC)

AFFIDAVIT ON BEHALF OF DEFENDANT HARRY GOODKIN & COMPANY IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DORIAN GOLDSTEIN, being duly sworn, deposes and says:

1. I am a partner of the firm of Harry Goodkin & Company and have knowledge of the facts hereinafter stated.

2. This affidavit is submitted in opposition to plaintiffs' motion for summary judgment.

3. I am presently a partner of defendant Harry Goodkin & Company and have been a partner of that firm since 1962. I am a certified public accountant and have been licensed to practice that profession in the State of New York since 1951. I graduated from the Wharton School of Business and Finance of the University of Pennsylvania in 1948 and since that time have been engaged in actice practice as an accountant.

4. During and prior to 1968, the firm of Harry Goodkin & Company rendered services to Fleschner Becker Associates ("FBA") and as part of those services performed an audit of the financial statements of FBA for the fiscal year ending September 30, 1968.

5. The services rendered to FBA by Harry Goodkin & Company were at all times rendered in accordance with generally accepted accounting principles and auditing standards and procedures. In particular, the presentation of assets of FBA and the investments in securities in the financial statements as at September 30, 1968 was in accordance with the generally accepted accounting principles and auditing standards in effect at the time the audit was conducted and at the time the opinion on the statements was rendered. The opinion rendered on the financial statement of FBA as at September 30, 1968 and the manner of presentation of the information set forth thereon were also in accordance with the generally accepted accounting principles and auditing standards and procedures.

6. Generally accepted accounting principles and auditing standards in effect at the time the statements were prepared and the opinion rendered did not require a disclosure of investments in restricted securities. There was no requirement of the federal securities laws or rules or releases adopted or issued thereunder as to disclosure of investments in restricted securities at the time the statements were prepared and the opinion rendered.

7. The preparation and presentation of the financial statements of FBA for the fiscal year ended September 30, 1968 and in particular the statements of its assets and investments in securities were in accord with the procedures, standards and principles followed in the preparation and presentation of financial statements of other limited partnerships engaged in a business similar to that of FBA. Such other statements did not separately disclose investments in restricted securities.

8. Should the Court for any reason not grant defendant Harry Goodkin & Company's motion for summary judgment and should this action proceed to trial, I am advised by counsel, that, expert testimony will be offered to support the practices and procedures followed by this defendant in rendering its services. Expert testimony will also be offered to show that the financial statements and their contents, as at September 30, 1968, were prepared in accordance with generally accepted accounting principles and accepted auditing standards and procedures and that the preparation of the statements, as well as their content and form of presentation did not contravene any requirements of the federal securities laws or rules or releases adopted or issued thereunder.

Respectfully submitted,

Howard M. Holtzmann

Sworn to before me this
18th day of April, 1974.

Morton L. Rubinson

MORTON L. RUBINSON
Notary Public, State of New York
No. 60-3391500
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

71 Civ. 341: RLC

MALCOLM K. FLESCHNER, et al.,

Defendants.

- x

STATEMENT OF DEFENDANTS FLESCHNER, BECKER AND FLESCHNER BECKER ASSOCIATES PURSUANT TO RULE 9(g) IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendants Malcolm K. Fleschner, William J. Becker, and Fleschner Becker Associates ("FBA") contend that as to the following material facts there is no genuine issue to be tried:

1. Defendants incorporate by reference their statement pursuant to Rule 9(g) dated January 25, 1974, which was submitted in support of their motion for summary judgment.

2. Prior to 1970, generally accepted accounting principles did not require that financial statements of investment partnerships, such as FBA, indicate investments in securities not registered pursuant to the Securities Act of 1933, 15 U.S.C. §§ 77a et seq.

3. Defendants did not profit or receive any financial benefit because of the plaintiffs' decision to remain limited partners in FBA until September 30, 1970, instead of withdrawing on September 30, 1968.

4. The amounts of cash periodically received from FBA by plaintiffs did not constitute withdrawals of plaintiffs' share of partnership income. They were withdrawals from plaintiffs' Capital Account.

5. The FBA financial statements for the fiscal years ending September 30, 1967, and September 30, 1968, were prepared and mailed to the FBA partners by defendant Goodkin & Co. Prior to the mailing, defendants Fleschner and Becker reviewed drafts of the financial statements for the purpose of reviewing their format. There was no discussion of the desirability or necessity for identifying investments of unregistered securities, and defendants Fleschner and Becker did not suggest to, or cause, Goodkin not to identify FBA's investments in unregistered securities. There was no scheme, plan, device, design, or other concerted or conscious activity by any of the defendants, individually or collectively, to conceal such investments and no intention to do so.

6. On at least two occasions in 1967, Fleschner informed Marjorie Abrahamson that FBA had participated in private placements of unregistered securities. By virtue of her personal ownership of unregistered stock of Foote, Cone & Belding, Marjorie Abrahamson understood what unregistered securities were.

Response to Plaintiffs' Rule 9(g) Statement

1. These defendants controvert the implication in paragraph 8 of plaintiffs' 9(g) statement that the general partners of FBA approved the financial statements prepared by Goodkin. These defendants reviewed draft financial statements

for format and manner of presentation, but did not discuss accounting matters with Goodkin.

2. Defendants Malcolm F. Fleschner, William J. Becker and Fleschner Becker Associates ("defendants") admit that so-called "monthly reports" were sent to the partners of Fleschner Becker Associates ("FBA"), as asserted in paragraph 11 of plaintiffs' statement, but deny the materiality of said reports and assert that the reports were never intended by the partners to be, and were not received by the partners as, full reports of FBA's activity.

3. Defendants controvert the assertions of paragraph 14 of plaintiffs' statement. They claim that plaintiffs were informed of FBA's investments in unregistered securities, and maintain that plaintiffs, due to their prior experience with unregistered securities, were fully familiar with the meaning of the terms "private placement" and "unregistered securities."

4. Defendants dispute the validity of the percentage figures presented in paragraph 15 of plaintiffs' statement as inaccurate and misleading. They contend that any such calculation must be based on the total value of FBA's invested assets, including cash and cash equivalents, short sales and other investments. They assert that the percentage of FBA's total investments invested in restricted securities were as follows:

9/30/67	7.52%
9/30/68	38.79%
9/30/69	49.85%

5. Defendants deny the accuracy of the figures presented in paragraph 16 of plaintiffs' statement.

6. Defendants deny the assertions in paragraph 17 of plaintiffs' statement, except admit that the partnership agreement contained the withdrawal provision to which plaintiffs refer. They state that plaintiffs knew of FBA's investment in unregistered securities at least as early as 1967, that plaintiffs did not withdraw at that time and would not have withdrawn, and did not withdraw, for that reason in 1968, 1969 or 1970, but withdrew because of a decline in the partnership's assets and a general decline in the securities market.

Dated: New York, New York
April 22, 1974

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Defendants
Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates,
48 Wall Street,
New York, New York 10005
(212) 952-8100

Halpern Affidavit

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, et al.,

Defendants.

71 Civ. 344 (RLC)

AFFIDAVIT

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

LEONARD J. HALPERN, being duly sworn, deposes and says:

1. I am a certified public accountant residing at 141 Old Short Hills Road, West Orange, New Jersey.

2. I was an employee of Harry Goodkin & Company ("Goodkin"), an accounting firm, from before 1965 until December 31, 1967, and a partner in that firm from January 1, 1968 until December 31, 1968. On January 1, 1969, I was employed by Fleschner Becker Associates ("FBA") as an accountant and since that time I have performed accounting services for FBA, either as an employee of FBA or other entities which contracted to perform certain administrative services for FBA. I am familiar with the books of original entry, the general ledger, the securities ledger, and other files and records of FBA and with the manner in which they were maintained.

3. From my review of FBA's books and records, a substantial portion of the increases in the value of FBA's assets which occurred during the fiscal years ending September 30, 1967, and September 30, 1968, was the result of FBA's purchasing, holding and selling securities not registered with the Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C. § 77a et seq.

4. Had Marjorie and Robert Abrahamson withdrawn from FBA as of September 30, 1968, their Distributive Interests would have been determined by first reducing their Equity Capital Shares by an amount equal to 20% of the unrealized net capital gains as reflected in their respective Capital Accounts. The resulting figure, their Withdrawing Partners Distributive Interest, would have been further reduced by a 1% charge pursuant to Article 6 of the governing 1966 FBA agreement of limited partnership. The figures for the Abrahamsons, as taken from the FBA books and records, follow:

	Marjorie Abrahamson	Robert Abrahamson
Equity Capital Share	$1,141,386.14	$ 605,076.47
20% Charge for net unrealized capital gains	115,940.30	62,211.62
Distributive Interest	1,025,445.84	542,864.85
1% charge	10,254.46	5,428.65
Net Distributive Interest	$1,015,191.38	$ 537,436.20

5. When the Abrahamsons withdrew from FBA in 1970, their Distributive Interests net of withdrawals made in cash during the fiscal year ended September 30, 1970, were paid in cash.

6. From my examination of FBA's books and records, I have concluded that the figures presented in paragraph 6 of the Abrams affidavit, submitted by the plaintiffs in this action, insofar as those figures purport to represent the percentage of FBA's assets invested in unregistered securities, are inappropriate and incorrect. In calculating the total FBA investments from which he extracts his percentage figures, Mr. Abrams failed to include the value of several types of investments made by FBA, including government obligations, oil leaseholds, certificates of deposit, options and short sales of securities or options. The percentages given by Mr. Abrams are therefore substantially higher than they should be. For example, as of September 30, 1967, my calculations indicate that the percentage of FBA assets invested in unregistered securities, including investments in oil leaseholds, was 7.52%, as compared to the Abrams figure of 15.02%. As of September 30, 1968, my calculations resulted in a figure of 38.79%, while the Abrams figure is 72.07%. As of September 30, 1969, my calculations resulted in a figure of 49.85%, while the Abrams figure is 95.02%.

7. Mr. Abrams represents in paragraph 8 of his affidavit that FBA made 80 separate purchases of unregistered securities. This is misleading. FBA made approximately 40 investments in unregistered securities. Each separate purchase of unregistered securities may have included several different types of investments, but each type of investment included in a single purchase would not constitute a separate purchase. For example, at least 12 of FBA's investments in unregistered securities consisted of a combined purchase of

a debt obligation (note) and warrants. Mr. Abrams in his computation evidently counted the purchase of such a combined package as separate purchases.

8. From the inception of FBA to September 30, 1970, FBA made approximately 20 sales or exchanges of the securities which had been purchased while unregistered.

Leonard J. Halpern

Sworn to before me
this day of April, 1974

Notary Public

Carlton Affidavit in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, et al.,

Defendants.

71 Civ. 344: RLC

AFFIDAVIT

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD E. CARLTON, being duly sworn, deposes and says:

1. I am a member of the firm of Sullivan & Cromwell, counsel for defendants Malcolm K. Fleschner, William J. Becker and Fleschner Becker Associates in this action. I submit this affidavit in support of their motion for summary judgment and in opposition to plaintiffs' motion for summary judgment.

2. Attached hereto as Exhibit A are copies of pages 34 to 40 of Mr. Fleschner's deposition in which he describes the occasions upon which he told Mrs. Abrahamson that FBA had purchased unregistered securities of at least three companies through private placements.

3. Attached hereto as Exhibit B are copies of pages 79 to 81 of Mr. Fleschner's deposition where he described the right to demand registration which FBA acquired with its purchases of most unregistered securities.

4. Attached hereto as Exhibit C are copies of pages 19 to 25 of Mr. Fleschner's deposition, in which he testified that the general partners reviewed the draft financial statements only for format and manner of presentation.

5. Attached hereto as Exhibit D are copies of pages 19 to 25 of Mrs. Abrahamson's deposition, in which she testified concerning her familiarity with unregistered stock through her acquisition and ownership of Foote, Cone & Belding stock, and of page 153 of her deposition, where she testified that she "knew what restricted stock was."

6. Attached hereto as Exhibit E are copies of pages 50 to 58 of Mrs. Abrahamson's deposition, in which she testified concerning the Abrahamsons' withdrawal from FBA in 1970.

Richard E. Carlton
Richard E. Carlton

Sworn to before me this
22nd day of April 1974

Constance L. Garland
Notary Public

CONSTANCE L. GARLAND
Notary Public, State of New York
No. 31-6483925
Qualified in New York County
Commission Expires March 30, 1976

Exhibit A to Carlton Affidavit (Deposition)

A No.

MR. GRAHAM: The question is the same thing and you answered no. Did you mean yes?

THE WITNESS: Better ask me a question and let me answer it so we have it clear.

Q Did you ever speak or write to the Abrahamsons about the Steadman securities?

A No.

Q Did you ever speak to them or write to them about Perfect Film Warrants?

A No.

Q Did you ever speak to them or write to them about Cyclax?

A No.

Q Did you ever speak to them or write to them about International Nuclear?

I mean all stock and warrants which are mentioned on the first page of Exhibit 1.

A No.

Q Did you ever speak to them or write to them about American Realty Convertible Bonds which appears at the top of Page 2 of Exhibit 1?

A Yes.

SALLY SHELKIN, C.S.R.

Q And when was that?

A I think some time in 1967.

Q Did you speak to Mr. Abrahamson or Mrs. Abrahamson or both?

A To the best of my recollection, it was with Mrs. Abrahamson.

Q Was it in person or on the phone?

A In person.

Q How many times did you discuss American Realty convertible bonds with her?

A Once.

Q And where did that take place?

A At her home.

Q Can you approximate any better for me the time?

A The date?

Q That it took place.

A No.

Q Some time in 1967?

A Yes.

Q Who else was present -- was anybody else present in the room?

A I don't recall anybody else being present, no.

Q Tell me, as best you can, what you said to her and

SALLY SHELKIN, C.S.R.

what she said to you on that occasion.

A It was a social evening at their home. Mrs. Fleschner and I would see Bob and Marjorie Abrahamson at their home on occasion. We would discuss business matters. We would discuss her business. She would discuss my business. This was a matter of a long standing relationship and this was at a time when we had begun to do some private placements and I mentioned several that we had been involved in, and that was the sum and substance of the conversation.

Q You mentioned American Realty?

A Amrep.

Q Do you recall any others that you mentioned?

A Yes.

Q What were the others?

A The other one I particularly remember was Kane Miller.

Q That's the one that is second from the bottom on Page 2 of Exhibit 1?

A Yes.

Q Do you recall mentioning any other securities to her besides Kane Miller and Amrep?

MR. GRAHAM: On that occasion?

MR. ALMSTEIN: On that occasion.

A No.

Q Now, did you tell her that they were acquired in a private placement?

A Yes.

Q Did you tell her that they were not registered with the Securities and Exchange Commission?

A I don't know if I went into exact details to that extent. I did describe them as being private placements of unregistered securities.

Q You think you said unregistered?

A Yes.

Q Did she ask you what that meant?

A I don't think so.

Q Did you tell her what it meant?

A I don't think so, no.

Q When I say what it went -- first, did you tell her what private placement meant?

A Yes.

Q What did you tell her on that subject?

A That it was a private investment we had made in a public company of unregistered securities.

Q That is the total substance of what you told her a private placement was; am I correct?

A That is what I told her we had done with partnership

SALLY SHELKIN, C.S.R.

moneys, right.

Q Did you tell her what unregistered meant?

A I don't think so.

Q Did you tell me that this took place during an evening?

A Yes.

Q Do you recall approximately what time of night it was?

A After dinner.

Q Would it have been after 9:00 o'clock?

A I don't know.

MR. ALENSTEIN: Maybe we can save time -- with your permission, Mr. Graham.

Q Look over the rest of the securities which are mentioned in Exhibit 1 and tell me whether you can recall ever discussing with either of the Abrahamsons or writing to either of them about any of those securities.

A Well, there are several oil investments that are noted on here that were also noted in the annual reports to our partners.

They weren't noted by name of security or investment but were noted by amount in the annual reports to our partners.

Q I am talking about other than what was said in the

SALLY SHELKIN, C.S.R.

annual reports. What I mean -- I thought I made it clear -- perhaps I should have said it again. What I am asking you again is whether you ever discussed or wrote to the Abrahamsons other than in the annual reports about any of the remaining securities that we have not so far mentioned that were named in Exhibit 1.

A I have a recollection that I discussed or mentioned the fact that we were involved in the Ling-Temco-Vought activities.

Q Where is that?

A That is on the fifth page, I guess.

Q All right, at the top of the fifth page, you are referring to the Ling-Temco-Vought notes and warrants; is that right?

A Correct.

Q You say you think you told Mrs. Abrahamson that you were involved in those securities?

A Yes.

Q And when was that?

A Some time in '67.

Q Is that the best that you can approximate the time?

A Yes.

Q And was it in person or over the phone?

A In person.

SALLY SHELKIN, C.S.R.

Q Where was it?

A I believe at a social gathering at their home.

Q And do you recall anybody else being present?

A No.

Q Not during this conversation?

A That is what I mean, no.

Q There were other people in the house, I take it.

A Yes.

Q And what did you say and what did she say on that occasion?

A Well, Mr. Ling was very active. He was very highly publicized, his affairs were being greeted with great enthusiasm in the press and in the stock market, and so on, and I mentioned that we had done some private investment in the Ling-Temco business through Lehman Brothers, I think. That was the sum and substance of it.

Q Are there any other securities named in Exhibit A that you can recall discussing with the Abrahamsons or writing to them other than the annual reports?

A Let me just review these now. (Looking at document) No.

Q Do you know whether any of the other general partners of Fleschner Becker Associates ever discussed with

SALLY SHELKIN, C.S.R.

Exhibit B to Carlton Affidavit (Deposition)

is the extent and nature of any registration rights that Fleschner Becker Associates had when it bought the securities.

MR. GRAHAM: First of all, do you understand the question?

THE WITNESS: Yes, sir.

MR. ALENSTEIN: Off the record.

(Discussion off the record)

MR. GRAHAM: I don't think that the witness could answer except to the extentthat he has the information in his head.

MR. ALENSTEIN: Off the record.

(Discussion off the record)

MR. ALENSTEIN: Well, let him try to answer.

MR. GRAHAM: Go ahead, if you can.

Before you do, let me get the question read back.

(Question read)

A In most instances, we had the absolute right to request registration within a reasonable length of time. In some instances, the securities were bought on the basis of an undertaking to register forthwith, and in most of these private placements we had every right, or jointly with other purchasers in some instances the right to demand the

SALLY SHELKIN, C.S.R.

registration statement.

Q In those instances where there were other purchasers, did there have to be a certain number or a certain percentage of participants in the private placement concur in the demand?

A In some instances, yes.

Q Weren't there other participants in the private placement in most of these securities?

A I can't give you a figure now. In numbers, many of them involved other purchasers.

In volume, meaning dollars, some of them did not involve other purchasers.

Q Did you ever exercise your registration rights with respect to any of these securities?

A "Ever" is a long time, counselor.

Q Well, all right -- prior to September 30, 1970, did you exercise the registration rights that you had?

A Yes.

Q Do you recall as to which securities you exercised those rights -- looking again at Exhibit 1 for identification.

A I would have to check that.

Q And let me be clear on that. On the registration rights when you say you had the right to demand registration, am I correct that what you had was a right to demand that a

SALLY SHELKIN, C.S.R.

registration statement be filed and that the issuer use its best efforts to it becoming effective?

A In many instances, that was the case.

Q Did you have any instances where you had an absolute right to an effective registration statement?

A No, there were instances where registration statements were being filed at or about the time the private placements were being made.

Q Now, Mr. Fleschner, look at Cannon Film Associates, the first security named. I think you told me that was a partnership participation.

A I think it was a 1241 partnership.

Q Was that in registration at the time you bought it?

A I don't believe so.

Q Did you have any sort of registration rights at the time you bought it?

A I don't recall. As you will see, counselor, that represented a relatively modest investment -- quite modest.

Q Yes.

Well, I will tell you what I want to know as to each of them and, that is, by each of them I mean each of the securities named in Exhibit 1for identification and that is whether it was in registration at the time you bought it.

SALLY SHELKIN, C.S.R.

Exhibit C to Carlton Affidavit (Deposition)

not?

A Yes, they would be.

Q And then copies of the certified statements would be mailed to the partners -- to the limited as well as the general partners; is that right?

A Yes.

Q And did you see the statements and the certification before it was mailed?

A Yes.

Q Did the general partners see those statements and certifications before mailing?

A Yes.

Q Did you confer from time to time with Goodkin & Company during the process of the annual audit about questions that might come up?

A No.

Q Did any of the general partners do that?

A Not that I know of.

Q Did you or any of the general partners approve the statements before Goodkin sent them?

MR. GRAHAM: I object to the form of the question. You may answer.

A I don't know what you mean by approved. It wasn't

SALLY SHELKIN, C.S.R.

something that we had the right of approval over.

Q Well, isn't it a fact that under the partnership agreement of Fleschner Becker Associates as it existed in 1961 and also as it existed in 1968 --

A It never existed in 1961.

Q I'm sorry. I meant to say '66 and also in '68. Isn't it a fact that the general partners were empowered to decide the valuation of a certain kind of a securities in the portfolio of Fleschner Becker Associates?

A Yes.

Q What kind of securities?

MR. GRAHAM: I object to the question on the ground that it is irrelevant in this lawsuit and I direct the witness not to answer.

MR. ALENSTEIN: Well, I am probing his answer in which he said he did not approve statements before they were mailed.

MR. GRAHAM: On that ground, I will allow him to answer the question.

MR. ALENSTEIN: I didn't mean to ask him for the names. I meant to ask him for which kind of securities the general partners determined the value of them pursuant to the partnership agreement.

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MR. GRAHAM: I object, and the direction stands.

Q Isn't it a fact that the general partners were empowered by the agreement to determine the value of securities for which there was no market?

MR. GRAHAM: Objection as to the form of the question. You may answer.

A Yes.

Q Isn't it a fact that from time to time during 1966 through 1968, there were securities of that kind in the portfolio of Fleschner Becker Associates?

MR. GRAHAM: Objection to the form of the question. You may answer, but before he does I think you should make it clear what you mean by "securities of that kind."

MR. ALENSTEIN: For which there was no market.

A I am not sure if that was the case in 1966.

Q But in 1967 and '68 it was the case?

MR. GRAHAM: Would you read back the question -- that previous question.

MR. ALENSTEIN: I will rephrase it.

Q Weren't there securities for which there was no ready market in the portfolio of Fleschner Becker Associates in 1967 and 1968?

MR. GRAHAM: I object to the form of the question.

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I think the phrase "for which there was no ready market" is so vague that it really isn't capable of being answered.

MR. ALENSTEIN: You are directing him not to answer?

MR. GRAHAM: I am asking you to clarify the question.

MR. ALENSTEIN: All right.

Q Well, let me refer you to Defendant's Exhibit 8 for identification, marked during the Defendant's Examination of plaintiffs, which is an agreement of a limited partnership revised as of October 1st, 1968 of Fleschner Becker Associates and, in particular, to paragraph 3.05 on Page 10. Let me just read it.

It says: "For purposes of determining the value of securities, securities which are listed on a national securities exchange shall be valued at their last sales prices on the date of determination or, if no sales occurred on such day, at the mean between the bid and askedprices on such day, securities which are not listed shall be valued at their last closing bid prices if held long by the partnership and their last closing asked prices if held short by the partnership. Securities which are in the form of put or

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call options shall be valued at their fair market value and securities which are commodities or commodity contracts shall be valued at their last prior sales prices. All of the securities and property shall be assigned such value as the managing partners may determine and such value as well as all other values assigned to securities by the managing partners pursuant to this paragraph of this section 3.05 shall be final and conclusive as to all of the partners."

Now, what I am really referring to is the securities which fall into the category of "all other securities" -- those for which no method has been assigned in the agreement for valuation.

MR. GRAHAM: If you put the question that way, I have no objection to it.

MR. ALENSTEIN: All right.

Q Mr. Fleschner, you see the Defendant's Exhibit 8, Page 10, the term, "all other securities" -- about two thirds of the way down the page.

A Yes.

Q In '67 and '68, were there securities in the portfolio of Fleschner Becker Associates which would fit that description?

A Yes.

SALLY SHELKIN, C.S.R.

Q Did the general partners determine the values of these securities in '67 and '68?

A And property.

Q -- and property?

A Yes.

Q And did you communicate that determination to Goodkin & Co. in the course of their annual audit?

A Yes.

Q In '67 and '68?

A Yes.

Q Was such other securities and property values which were shown in the statements audited by Goodkin & Company and mailed tothe partners always the values which the general partners had designated?

A I don't know. I don't remember.

Q Do you recall any occasions on which Goodkin & Company took issue with the values assigned by the general partners to such securities and property?

A I do not remember any such instance.

Q When you saw the statements and certification by Goodkin & Company before mailing them to the limited partners, did you examine them?

A Yes.

SALLY SHELKIN, C.S.R.

Q Did you thereafter have any communication with Goodkin & Company before the mailing of the statements and certification?

A As I recall, we went over the format of the proposed audit to be sent to the partners and discussed headings and columns and that sort of thing -- presentation.

Q Well, you call it a proposed audit --

A (Continuing) The format I was discussing is that we discussed the format of the audit.

Q Am I correct that what Goodkin & Company would send the general partners would be only the order of a draft of the statements that they proposed to send?

A Yes.

Q And the general partners would then look them over?

A Yes.

Q And if there was some suggestion you wanted to make, you would make it?

A Yes.

Q Do you recall any particular suggestions you made in '66 through '68 to Goodkin & Company about these annual statements?

A No, no.

Q Or any of the partners?

SALLY SHELKIN, C.S.R.

Exhibit D to Carlton Affidavit (Deposition)

A Yes.

Q When did you leave Foote, Cone & Belding?

A In 1954.

Q When did you go back to Foote, Cone & Belding?

A 1956.

Q And you stayed with Foote, Cone & Belding until your retirement?

A That's right.

Q When was that?

A Well, I was semi-retired at the end of 1967 and totally in May of 1969.

Q In the period commencing in 1956 through your retirement what were your responsibilities as a vice-president of Foote, Cone & Belding?

A Creative.

Q Were you a stockholder of Foote, Cone & Belding?

A Starting in '56, yes.

Q What were the circumstances under which you received your stock?

A They asked me to come back to the agency, and I was trying to get stock in Dancer-Fitzgerald, which was very closely held. This was all privately-held stock owned only by employees.

When I went back to Foote, Cone, or when I was

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negotiating, since they couldn't pay me enough money to make it worth my while, I wanted a capital gain, and they agreed to sell me stock in the company, which they did.

Q Did you give them an investment letter?

A No, I paid them for it.

Q Was the stock subject to any restriction?

A Oh, yes. It was totally privately held, and you sold it back to the company when you left at the book value.

Q Was there a written agreement to resell to the company at book value?

A Yes, yes, I am sure there was.

Q Do you have a copy of that agreement?

A I am sure I do, but I don't know whether I have it here.

MR. ALENSTEIN: Let me just make a statement.

In your letter which we have marked as Defendants' Exhibit 1, Mr. Carlton, you did request from me documents concerning the stock of Foote, Cone & Belding which Mrs. Abrahamson had.

I have some problems about producing the documents because it is not at all clear to me that they have anything to do with the case both as to subject matter and as to time. And for that

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reason I don't think we are going to produce any of those documents at this time.

MR. CARLTON: I agree with you that Mrs. Abrahamson's Foote, Cone & Belding stock, the restrictions on it are not relevant to this case, if you are willing to stipulate that that applies to the purported restrictions on them as well.

MR. ALENSTEIN: Well, sir, you have undoubtedly read our complaint and there is a reference to it in the complaint. And I think what I would insist upon is that conversations that Mrs. Abrahamson had with Mr. Fleschner concerning those restrictions are highly pertinent. What the actual terms were, I don't know. Maybe we can discuss this further. Maybe you have a statement to make about it which will persuade me?

MR. CARLTON: It seems to me highly appropriate in the light of the claim made in the complaint for us to probe whether in fact any such restrictions existed, and the nature of the restrictions.

MR. ALENSTEIN: I see.

(Discussion off the record.)

MR. ALENSTEIN: Mr. Carlton, it appears, in any event, we don't have the 1956 agreement, if that

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is its date, with us today. We think we can locate it and I will take the request under advisement.

MR. CARLTON: Fine.

BY MR. CARLTON:

Q Do I understand you correctly, Mrs. Abrahamson, that the restriction on the stock which you got in 1956 was a requirement that the stock be sold back to the company at book value?

A Of the then book value, when you left.

Q At the time of sale?

A That's right, nobody who was not employed by the company, or had inherited the stock -- as I recall it, I put my husband down as the inheritor.

Q Now subsequent to that time did Foote, Cone & Belding go public?

A Yes.

Q Distribute its stock to the public?

A That's right.

Q And in connection with that sale of stock did you enter into any restrictive agreements regarding the disposition of your stock?

A Yes.

MR. CARLTON: I would make the same request, Mr. Alenstein, that you produce that

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agreement.

Thank you.

Off the record.

(Discussion off the record.)

MR. ALEXANDER: I find a document that apparently was sent to the stockholders along with the stockholders agreement.

MR. CARLTON: Let's mark these documents as Defendants' Exhibits 14-A and 14-B. 14-A is a copy of a document entitled "Foote, Cone & Belding, Inc., Stockholders Agreement," and 14-B being a copy of a letter from Robert F. Carney, Chairman of the Board of Foote, Cone & Belding, Inc., to the stockholders, dated August 16, 1963.

(Documents referred to above marked, respectively, Defendants' Exhibits 14-A and 14-B for identification, this date.)

BY MR. CARLTON:

Q Mrs. Abrahamson, in our conversation off the record, you mentioned a separate agreement which you signed restricting your right to sell any of your stock that was entered into at or about the time of the public sale.

MR. CARLTON: Do you have a copy of that,

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Mr. Alenstein?

MR. ALENSTEIN: I have looked for it and I don't seem to have it. I'm sorry, we do not have whatever additional agreement there may have been.

BY MR. CARLSON:

Q Mrs. Abrahamson, you said you acquired some Foote, Cone & Belding stock when you went back to them in 1956. Did you subsequently acquire any additional stock?

A Yes.

Q When was that?

A Yearly, every year.

Q Was this pursuant to a stock option plan?

A No, it was a direct purchase. I was allowed to buy a percentage of my salary in Foote, Cone & Belding stock.

Q Was all of the stock which you purchased subsequent to the same restrictions?

A Yes.

Q And in all cases the company had the right to buy back the stock at book value?

A That's right.

Q And were you required to tender your stock to the company upon leaving?

A Yes.

Q Retiring?

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A Yes, but not after it went public. The rules were changed.

Q Let's come back to this subject later. Maybe I can read this over the lunch break. How long have you known Mr. Fleschner?

A Since around 1956.

Q How long have you known Mr. Becker?

A Since 1966.

Q And how long have you known, if you do personally know, Mr. Ehrlich?

A I don't remember ever meeting Mr. Ehrlich.

Q And Mr. Pomerance?

A I was told I had met him the last time, and the only time I remember seeing him, which was in June, 1970.

Q When was the first time you met Mr. Becker?

A I can't really remember that, but it was after he became a partner, after they became Fleschner Becker Associates.

Q What was your relationship to Mr. Fleschner?

A We were friends.

Q Social acquaintances?

A Yes.

Q How often did you see Mr. Fleschner?

MR. ALBSTEIN: Excuse me, during what time

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was said about this Defendants' Exhibit 6.

MR. ALENSTEIN: That she has told you already.

A He said it looked like a fund we should leave and essentially that's all he said.

Q Did he explain why?

MR. ALENSTEIN: That she has also answered.

MR. BESHAR: Come on, Counsel, stop interfering. Just let the thing go, really.

A He explained it had a disproportionate amount of restricted stock in it, what to him was a frightening thing for our sakes.

Q Did he indicate what he thought were sensible ratios?

A No, he did not.

Q Did he explain to you what restricted stocks were?

A I know what restricted stock was. I did not know in detail what one kind was versus another. But I had had experience with restricted stocks.

Q Did Mr. Abrams tell you something you didn't already know when you discussed that with him?

A Actually, he didn't. He confirmed what we suspected, but he confirmed it as an expert, as an accountant looking

Exhibit E to Carlton Affidavit (Deposition)

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Q When was that?

A We had read it in January. It was sometime in the early part. And he read it. And he said he thought -- he had, by the way, seen the report the year before and he had spoken very highly of the fund, having read the 1968. When he read the '69, he said he thought we should get out as soon as possible.

Q For what reason?

A For the reason that so much of the investment was in non-salable securities.

Q Did he make any comment about the performance of the partnership over the prior year?

A No.

Q None at all?

A No.

Q Did you discuss the state of the stock market in general?

A No.

Q When was this meeting, do you remember the date?

A I don't remember.

Q Do you remember what month it was in?

A No.

Q Was it January?

A No.

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Q You just can't pin it down?

A No.

Q Do you have any way of pinning it down? Do you keep a diary?

A No, I don't.

Q When did you first give notice to the partnership of your intention to withdraw?

A In July of 1970.

Q Between the time you received the 1969 fiscal year report and July, 1970 did you meet with Mr. Fleschner or any other partner of Fleschner Becker?

A Yes.

Q Who was that?

A I met with Mr. Fleschner, as I told you, and I met with Mr. Becker in the absence of Mr. Fleschner.

Q How many meetings were there?

A Three.

Q When were they, do you remember?

A My first one with Mr. Fleschner was, I think, in February sometime.

Q You don't remember the date?

A No, indeed.

Q Can you tell us what you discussed at that meeting?

A It was at that meeting that he gave me that document that Mr. Alenstein has given you, which listed our contributions and our withdrawals up to the end of 1969.

Q By "that document," is this the document you mean (indicating)?

A Yes.

MR. CARLTON: Would you please mark this as Defendants' Exhibit 16 for identification.

(Document headed "Fleschner Becker Associates Capital Accounts" marked Defendants' Exhibit 16 for identification, this date.)

Q Did he give you anything else at that meeting?

A No.

Q Did he tell you how come this document had been prepared?

A Yes. I mean I know how come. My husband had had --

MR. ALENSTEIN: The question is did he tell you.

THE WITNESS: No, he didn't tell me.

BY MR. CARLTON:

Q Do you know why it was prepared?

A I can only guess that he was trying to show me --

MR. ALENSTEIN: No guesses.

Q Do you know at whose request it was prepared?

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A Nobody requested it.

Q Nobody requested it be prepared?

A No.

Q Had you had any discussions with Mr. Fleschner prior to your meeting with him in February?

A No.

Q And subsequent to December 15, 1969?

A No.

Q Do you know whether Dr. Abrahamson had?

A Yes.

Q When was that?

A I think he saw him in late January or early February, whatever it was. It was before I did.

Q Where was the meeting with Mr. Fleschner, the February meeting?

A Mine?

Q Yes.

A At lunch.

Q Were you alone?

A Yes.

Q Can you give us the substance of the conversation which you had?

A He generalized about the market and about how he had thought it would do better; that he thought it would do

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better and he would call us and see both my husband and myself in April, we would have a further talk.

Q What did you tell him?

A I remember saying that it was -- that I didn't think they had followed their own advice about hedge funds, about the way they had planned to run their fund.

Q What precisely did you say?

A Oh, I don't know what precisely I said.

Q Did you tell him in what respect you thought he had not followed his own advice, as you put it?

A Well, I quoted Mr. A. W. Jones, who had recently figured in the paper as saying he thought such funds should be run very conservatively.

Q What do you mean by "such funds"?

A Hedge funds. I know that this fund, or I thought this fund was modeled after A. W. Jones.

Q As a generalization Mr. Jones had said this?

A He was talking about his own fund.

Q What else did you say to Mr. Fleschner?

A That's all I remember saying.

Q Was this meeting prior to your meeting with Mr. Abrams or after?

A Prior.

Q When did you next meet with Mr. Fleschner or

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Mr. Becker?

A Well, I had met with Mr. Fleschner and Mr. Becker was there in May.

Q Where was the meeting?

A At their office.

Q Was Dr. Abrahamson with you?

A No.

Q Had Dr. Abrahamson, to your knowledge, had any meetings with Mr. Fleschner or Mr. Becker in the interim?

A No.

Q Had you talked to them on the telephone in the interim?

A No, I think I only -- to make this date.

Q Did I ask you whether the meeting was at Mr. Fleschner's office?

A I think you did, but it was.

Q Would you please tell us the substance of the discussion which you had at that meeting?

MR. ALENSTEIN: Are we now talking about the May meeting?

MR. CARLTON: Yes.

A Well, I asked them how they were doing. I am trying to think just exactly what our conversation was. It was then for the first time that I brought up the subject of

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restricted stock.

Q What did you say?

A I asked them if they still owned a great deal of restricted stock.

Q Who is "them"?

A Mr. Becker and Mr. Fleschner.

Q They were both there?

A They were both there.

Q What was their response?

A Mr. Fleschner's response was yes, in companies that they had thought were good. I noticed the past tense at that point. I asked him where he thought this fund was going at, and he said it was going to be a very conservative fund. He did not use the word "continue" as a conservative fund. He talked of it as he had in 1965. That that's his idea of a fund.

Q Was that your entire discussion?

A Yes.

Q Did you tell Mr. Fleschner or Mr. Becker at that meeting that you wanted to withdraw from the fund?

A No.

MR. ALENSTEIN: Off the record.

(Discussion off the record.)

Q When did you notify the partnership that you

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wished to withdraw as a limited partner?

MR. ALENSTEIN: That has been asked and answered, has it not?

MR. CARLTON: I am trying to refresh my recollection.

A On the date in June when they received the letter -- July.

Q Do you have a copy of that letter?

MR. ALENSTEIN: It has been handed to you.

Off the record.

(Discussion off the record.)

BY MR. CARLTON:

Q Let me just show you a copy of a letter dated July 23, 1970, and ask you whether or not that is a true copy of the letter which you sent to the partnership?

A Yes.

MR. CARLTON: Would the reporter please mark that as Defendants' Exhibit 17.

(Letter dated July 23, 1970 referred to above marked Defendants' Exhibit 17-A for identification, this date.)

MR. CARLTON: Will the reporter mark for identification a similar letter dated July 23, 1970, apparently signed by Robert Abrahamson and addressed

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to Fleschner Becker Associates as 17-B.

(Letter dated July 23, 1970 from Robert Abrahamson to Fleschner Becker Associates marked Defendants' Exhibit 17-B for identification, this date.)

Q Between your meeting with Mr. Abrams in February of 1970, or thereabouts, and July, 1970, did you have any further meetings with Mr. Abrams?

A Yes.

Q When were they?

A In May or June of 1970.

Q How many meetings were there?

A One, as I recall.

Q Can you tell us what your discussion was with Mr. Abrams at that meeting?

A Yes, it was a meeting at which we discussed what the partnership agreement allowed us to do in making withdrawals before final withdrawal. And, if I recall, there was an item in there which said that a partner, at the pleasure of the general partners, could withdraw up to 25 per cent in a given year of the capital he had started the year with. Well, 25 per cent of what we had was roughly $250,000 at the start of the year. And Mr. Abrams at this point, which was May -- probably May, suggested that we

Defendant Harry Goodkin & Co. Rule 9(g) Statement in Opposition to Plaintiffs' Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES and HARRY GOODKIN & COMPANY,

Defendants.

71 Civ. 344 (RLC)

STATEMENT OF DEFENDANT HARRY GOODKIN & COMPANY PURSUANT TO RULE 9(g) IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendant Harry Goodkin & Company contends that as to the following material facts there is no genuine issue to be tried:

1. Defendant incorporates by reference its statement pursuant to Rule 9(g) dated January 24, 1974, which was submitted in support of its motion for summary judgment.

2. Prior to 1970, generally accepted accounting principles did not require that financial statements of investment partnerships, such as FBA, indicate investments in securities not registered pursuant to the Securities Act of 1933, 15 U.S.C. Sections 77(a) et seq.

3. Defendants did not profit or receive any financial benefit because of the plaintiffs' decision to remain limited partners in FBA until September 30, 1970 instead of withdrawing on September 30, 1968.

4. The amount of cash periodically received from FBA by plaintiffs did not constitute withdrawals of plaintiffs' share without partnership income. They were withdrawals from plaintiffs' capital account.

5. Prior to the mailing of FBA financial statements for the fiscal year ending September 30, 1967 and September 30, 1968, defendants Fleschner and Becker did not discuss the desirability or necessity for identifying investments of unregistered securities with defendant Goodkin. There was no scheme, plan, device, design or other concerted or conscious activity by any of the defendants, individually or collectively, to conceal such investments and no intention to do so.

6. On at least two occasions in 1967, Fleschner informed Marjorie Abrahamson that FBA had participated in private placements of unregistered securities. By virtue of her personal ownership of unregistered stock of Foot, Cohen and Belding, Marjorie Abrahamson understood what unregistered securities were.

RESPONSE TO PLAINTIFFS' RULE 9(g) STATEMENT

1. Defendant Harry Goodkin & Company admits that so-called "monthly reports" were sent to the partners of Fleschner Becker Associates ("FBA") as asserted in paragraph 11 of plaintiffs' statement, but denies the materiality of said report and asserts that the reports were never intended by the partners to be, and were not received by the partners as, full reports of FBA's activity and that the monthly reports were prepared and mailed by persons other than Goodkin.

2. Defendant controverts the assertion of paragraph 14 of plaintiffs' statement. It claims that the plaintiffs were informed of FBA's investment in unregistered securities and maintains that plantiffs, due to their prior experience with unregistered securities, were fully familiar with the meaning of the terms "private placement" and "unregistered securities".

3. Defendant disputes the validity of the percentage figures presented in paragraph 15 of plaintiffs' statement as inaccurate and misleading. It contends that any such calculation must be based on the total value of FBA's invested assets including cash and cash equivalents, short sales and other investments. It asserts that the percentage of FBA's total investments invested in restricted securities were as follows:

9/30/67	7.52%
9/30/68	38.79%
9/30/69	49.85%

4. Defendant denies the accuracy of the figures presented in paragraph 16 of plaintiffs' statement.

5. Defendant denies the assertions of paragraph 17 of plaintiffs' statement except admits that the partnership agreement contains the withdrawal provision to which plaintiffs refer. It states that plaintiffs knew of FBA's investments in unregistered securities at least as early as 1967, and that plaintiffs did not withdraw at that time and would not have withdrawn and did not withdraw for that reason in 1968, 1969 or 1970, but withdrew because of a decline in the partnership's assets and a general decline in the securities market.

D'AMATO, COSTELLO & SHEA

By _____
A Member of the Firm
Attorneys for Defendant
Harry Goodkin & Company
116 John Street
New York, N.Y. 10038

Dated: New York, New York
April 22, 1974

Defendant Ehrlich's Rule 9(g) Statement in Opposition to Plaintiffs' Motion for Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY,

Defendants.

71 Civ. 344 (RLC)

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STATEMENT OF DEFENDANT HAROLD B. EHRLICH PURSUANT TO RULE 9(G) IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Defendant Harold B. Ehrlich ("Ehrlich") incorporates by reference herein his statement pursuant to Rule 9(g), dated January 25, 1974, submitted in support of his motion for summary judgment, and contends that as to the following additional material facts there is no genuine issue to be tried:

1. The financial statements of Fleschner Becker Associates ("FBA") for the fiscal years ending September 30, 1967 and September 30, 1968 were prepared and mailed together with an accompanying accountant's report to the partners of FBA by defendant Harry Goodkin & Company ("Goodkin").

2. Defendant Ehrlich was not a partner of FBA for either fiscal years 1967 or 1968 and did not participate in the preparation of or any discussion of the format or content of said statements prior to their being mailed to the partners of FBA.

3. The reports of defendant Goodkin accompanying the 1967 and 1968 financial statements of FBA both referred to "securities held for investment", a term used to refer to securities not registered ("unregistered securities") pursuant to the Securities Act of 1933, 15 U.S.C. §§ 77A et seq.

4. By virtue of her ownership of unregistered stock of Foote, Cone & Belding, plaintiff Marjorie Abrahamson understood what unregistered securities were.

5. Prior to 1970, generally accepted accounting principles did not require financial statements of private investment partnerships, such as FBA , to separately set forth investments in unregistered securities.

6. The aforesaid financial statements reflected that FBA had total investments in securities and put and call options at market of $28,754,652.30 as at September 30, 1967 and $34,503,701.73 at September 30, 1968.

7. Both the 1967 and 1968 financial statements set forth the liabilities of FBA in respect of short positions and puts and calls. Said liabilities were $20,999,508.38 for fiscal 1967 and $16,825,701.55 for fiscal 1968.

8. All withdrawals by plaintiffs from FBA during the fiscal period ending September 30, 1969 were withdrawals from plaintiffs' Capital Account.

RESPONSE TO PLAINTIFFS'
RULE 9(G) STATEMENT

1. Defendant Ehrlich controverts any implication in paragraph 8 of plaintiffs' Rule 9(g) statement that he approved the financial statement prepared by defendant Goodkin for fiscal 1968.

2. Defendant Ehrlich controverts that he was a general partner of FBA in respect of the fiscal period ended September 30, 1968 and/or that he was ever empowered to approve or disapprove any document relating to said period. He further denies participation in the preparation of or any discussion of the fiscal 1968 financial statement of FBA prepared by Goodkin prior to the mailing of such statement to the partners of FBA.

3. Defendant Ehrlich admits that "monthly reports" were sent to the partners of FBA as asserted in paragraph 11 of plaintiffs' 9(g) statement during the period he was a partner of FBA from October 1, 1968 to September 30, 1969, but denies their materiality or that said reports were ever intended to be full reports of FBA's investment positions or activities.

4. Defendant Ehrlich further contends that no "monthly report" issued during the fiscal period in which he was a partner of FBA contained more than a brief comparison of the aggregate gain or loss in FBA's portfolio with the performance of the Standard & Poor's 500 Stock Average for the same period.

5. Defendant Ehrlich incorporates herein paragraphs numbered 3, 4, 5 and 6 of the Response of defendant Fleschner,

Becker and FBA, dated April 22, 1974, to plaintiffs' 9(g) statement.

Dated: New York, New York
April 26, 1974.

HILL, BETTS & NASH

By: Mark M Jaffe /
A Member of the Firm
Attorneys for Defendant
Harold B. Ehrlich
One World Trade Center
Suite 5215
New York, New York 10048
(212) 466-4900

Defendant Ehrlich's Affidavit in Support of His Motion for Summary Judgment and against Plaintiffs' Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs,	:	71 Civ. 344 (RLC)
-against-	:	
MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY, Defendants.	:	AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HAROLD B. EHRLICH, being duly sworn, deposes and says:

1. I am a defendant herein and reside at 146 Central Park West, New York.

2. This affidavit is submitted in support of the motion on my behalf for summary judgment and in opposition to plaintiffs' motion for summary judgment.

3. I became a general partner of Fleschner Becker Associates ("FBA") on October 1, 1968. I withdrew from the management of the partnership business on July 24, 1969 and from the partnership itself effective September 30, 1969. Plaintiffs, who were friends of defendant Fleschner, became limited partners of FBA (then the Fleschner Company) on or about July 1, 1965 and ceased to be partners on or about September 30, 1970. Plaintiffs were participants in FBA for approximately 3 years and 3 months prior to the time I became a partner and they remained limited partners for a year after I withdrew.

4. To the best of my knowledge and belief, I have never met, spoken with or had any personal contact whatsoever with either of the plaintiffs.

5. I was not a partner of FBA during the fiscal year ended September 30, 1968 and did not participate in any manner in the preparation of the statement of financial condition of FBA for that period or the accompanying accountants' report to the partners. Nor did I discuss the statement or report or any drafts thereof with any partner of FBA or FBA's certified public accountants, defendant Harry Goodkin & Company ("Goodkin") either prior to the mailing thereof by defendant Goodkin, in or about December, 1969 or at any time subsequent thereto.

6. During the fiscal year beginning October 1, 1968 and ending September 30, 1969, the sole period during which I was a partner of FBA, no "monthly report" issued by the partnership ever contained more than a one sentence statement as to the aggregate gain or loss in FBA's portfolio as compared to the performance of the Standard & Poor's 500 Stock Average for the same period. Said reports were never intended by FBA to be full reports of FBA's activities or of the individual holdings in its portfolio.

7. I am a Chartered Financial Analyst and have been employed in various capacities in the securities industry since 1957. I have read the affidavit of plaintiffs sworn to on March 11, 1974 and pertinent portions of their depositions in

this case. While I have no personal knowledge as to any alleged conversation between defendant Fleischner and plaintiffs prior to their investment in the partnership in July, 1965 or thereafter, I believe that plaintiffs' assertion that they were seeking a "conservative" investment in FBA is on the face of their own affidavit and the exhibits annexed thereto, preposterous. I further believe that at least in respect of the fiscal period during which I was a partner of FBA, the inference that plaintiffs would have this Court draw that their claimed paper losses were attributable, by and large, to FBA's investment in unregistered securities and would not have occurred had FBA invested instead entirely in registered securities would prove upon trial to be unfounded.

8. Plaintiffs, alluding to FBA's investment in unregistered securities, allege at paragraph 23 of their affidavit that:

> "... in view of our long-held concern for our financial security ... we would certainly have withdrawn as limited partners of FBA at the end of fiscal 1968 had we known the facts that were being concealed from us. Similarly, we would have withdrawn at the end of fiscal 1969 had we known the facts". (emphasis added)

9. The accountants' reports accompanying the financial statements of FBA for fiscal years 1967 and 1968 annexed respectively to plaintiffs' affidavit as Exhibits 3 and 4 did, in fact, disclose that FBA had invested in unregistered securities although plaintiffs say they did not then understand the meaning of the term "securities held for investment". Whatever lack of understanding plaintiffs may have had, however, as to FBA's investment in unregistered securities, the statements for fiscal 1967 and 1968 unquestionably showed that FBA's investment position was at sharp variance with plaintiffs' claimed portfolio objectives.

10. FBA's statement of financial condition as of September 30, 1967, annexed to plaintiffs' affidavit as Exhibit 3, disclosed that compared to total investments by FBA in securities and put and call options at market of $28,754,652.30, FBA had liabilities in respect of securities short and the proceeds on unexpired put and call options sold of $20,999,508.38 or equal to approximately 73% of FBA's total investments in securities and put and call options. Similarly, FBA's statement for the period ended September 30, 1968, annexed to plaintiffs' affidavit as Exhibit 4, showed that against investments by FBA in securities and put and call options at market of $34,503,701.73, FBA had liabilities in respect of shorts and proceeds on unexpired put and call options sold of $16,825,701.55 or equal to approximately 49% of FBA's total investment in securities.

11. Short selling and the writing of and trading in put and call options are engaged in by a very limited group of highly sophisticated investors and are among the most risky of investment techniques. Generally, such investments are prohibited by law for insurance companies and other regulated institutional investors.

12. By contrast, private placements involving the purchase of unregistered securities are significant forms of investment for insurance companies, pension funds, banks and other large institutional investors concerned with portfolio safety and at the same time with obtaining a hedge against inflation and the prospect of capital gain. Many

of these placements involve, as they did in the case of FBA, the purchase of debt securities with equity participation features either in the form of warrants or convertibility. This is amply borne out by the list of FBA's private placements between July 1, 1965 and September 30, 1970, annexed to plaintiffs' affidavit as Exhibit 12. The list indicates that the major portion of private placements purchased by FBA involved debt obligations in the form of notes or convertible bonds coupled with warrants or other rights to purchase the stock of the issuer. Normally, warrants or debt instruments with conversion rights move in sympathy with the stock of the issuer so that a private placement package may afford the investor the advantage of the safety of principal and return of a debt instrument and prospect of gain through exercise or sale of the warrants or conversion, as the case may be. In the case of stock purchased in a private placement, the terms of purchase often provide, as I believe they did in the case of FBA, for the purchase of the stock at a substantial discount from the existing market price and for registration.

13. Plaintiffs claim that had they known prior to September 30, 1968 of the extent to which FBA's portfolio was comprised of unregistered securities, they would have withdrawn at the earliest possible time in light of their purported investment objectives. Yet, plaintiffs elected to remain in FBA when the statement for fiscal 1967 and again the statement for 1968 unquestionably showed the extent to which FBA was engaging in short selling and the writing of and trading in put and call options. Moreover, even after plaintiffs say they first learned of FBA's investments in unregistered

securities upon receipt of the fiscal 1969 report, they made no effort to demand an early withdrawal notwithstanding their claim now of fraud.

14. I made no profit and derived no financial benefit because of plaintiffs' decision to remain as limited partners in FBA until September 30, 1970. I, in fact, lost more than $100,000 on my investment when I withdrew from the partnership.

Harold B. Ehrlich
HAROLD B. EHRLICH

Sworn and subscribed to
before me this 26th day
of April, 1974.

Emilie R. Lopez

EMILIE R. LOPEZ
NOTARY PUBLIC, State of New York
No. 24-2101031
Qualified in Kings County
Commission Expires March 30, 1975

Jaffe's Affidavit in Support of Defendant Ehrlich's Motion for Summary Judgment and in Opposition to Plaintiffs' Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, Plaintiffs,	:	71 Civ. 344 (RLC)
-against-	:	
MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, LEON POMERANCE, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY, Defendants.	:	AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

MARK M. JAFFE, being duly sworn, deposes and says:

1. I am a member of the firm of Hill, Betts & Nash, attorneys for defendant Harold B. Ehrlich ("Ehrlich") and am fully familiar with the pleadings and proceedings heretofore had herein. I submit this affidavit in support of defendant Ehrlich's motion for summary judgment and in opposition to plaintiffs' motion.

2. It is uncontroverted that defendant Ehrlich became a general partner of Fleschner Becker Associates ("FBA") on October 1, 1968 and that he withdrew from the management of the partnership business on July 24, 1969 and from the partnership itself effective September 30, 1969. Plaintiffs, became limited partners of FBA (then the Fleschner Company) on or about July 1, 1965 and ceased to be partners on or about September 30, 1970.

3. Plaintiffs in their Memorandum of Law submitted in opposition to defendants' motions for summary judgment and in support of plaintiffs' motion for summary judgment at Point I(F) p. 39 et seq., concede that the rule of Guild v. Herrick, 51 N.Y.S. 2d 326 (S.Ct.N.Y.Co. 1944) applies in this case and that a partner may be liable only for wrongdoing by a partnership which occurred during the period he was a partner. I respectfully submit, therefore, that apart from the other grounds urged on behalf of defendant Ehrlich, he is entitled to partial summary judgment insofar as plaintiffs allege wrongdoing and damage by the partnership for periods when he was not a partner in FBA.

MARK M. JAFFE

Sworn to and subscribed
to before me this 29th
day of April, 1974.

EDWARD H. DUGGAN, JR.
Notary Public, State of New York
No. 31 [illegible]
Qualified in Nassau County
Commission Expires March 30, 1976

Order and Opinion of Judge Carter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT ABRAHAMSON and
MARJORIE ABRAHAMSON, :

Plaintiffs, :

- against - : 71 Civ. 344

MALCOLM K. FLESCHNER, WILLIAM J. BECKER, :
HAROLD B. EHRLICH, FLESCHNER BECKER
ASSOCIATES, and HARRY GOODKIN & COMPANY, :

Defendants. :

- x

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Harry Goodkin & Company

CARTER, District Judge

OPINION

Plaintiffs, Marjorie and Robert Abrahamson, are former limited partners of defendant Fleschner Becker Associates ("FBA"), an investment partnership. In addition to suing the limited partnership, plaintiffs also bring this action against three general partners of FBA and the firm of certified public accountants which audited the books of FBA for the fiscal years 1966, 1967, and 1968. Generally, the plaintiffs allege acts of securities fraud. Specifically, they assert violations of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and of Rule 10b-5 promulgated thereunder, and of Section 206 of the Investment Advisers Act of 1940, 15 U.S.C. §80b-6. Federal jurisdiction is based upon Section 27 of the 1934 Act, 15 U.S.C. §78aa, and Section 214 of the Investment Advisers Act, 15 U.S.C. §80b-14.

Plaintiffs' principal claim is that defendants concealed from them that an enormous percentage of FBA's portfolio consisted of unregistered or restricted securities.[1] Plaintiffs allege that in 1970 they withdrew

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[1] "Restricted securities" are securities acquired directly or indirectly from an issuer or its affiliates in a transaction not involving a public offering. Absent registration, such securities are subject to restrictions regarding any later public sale. See generally SEC Securities Act Release No. 5223 (January 11, 1972).

from FBA as soon as they learned of FBA's disproportionate investment in unregistered securities, but claim they received far less than they would have received had they been informed of the truth earlier and withdrawn at the end of an earlier fiscal year. It is asserted that the concealment of the true facts concerning FBA's investments resulted in damages to them in excess of $1,000,000.

Background Facts

The following facts are not in dispute. On or about July 1, 1965, plaintiffs became limited partners of FBA (then known as The Fleschner Co.) following several conversations with defendant Malcolm Fleschner in late 1964 and in 1965. In those conversations, plaintiffs expressed their concern for financial security and conservatism in investment; Fleschner, in turn, expressed his intent to create an investment partnership with a conservative investment policy.

FBA was started as a small partnership. By April, 1966, it grew to 35 limited partners, and by October, 1968, it had at least 66 limited partners. Defendant Fleschner, the person responsible for FBA's formation, was at all times a general partner of FBA.

Defendant William Becker was a general partner at all times after April, 1966; and defendant Ehrlich was a general partner from October, 1968, to September, 1969. The defendant Harry Goodkin & Co. ("Goodkin") was the aforementioned firm of accountants. Year-end financial statements were certified by Goodkin and mailed to plaintiffs. Balance sheets were contained in the financial statements indicating FBA's investment in securities. The securities were not itemized in the statements for fiscal 1967 and 1968. The figure in the balance sheets showing FBA's securities investment was designated "market value." Goodkin sent drafts of the certified financial statements to the general partners of FBA for their review before it mailed them to the limited partners.

The general partners also mailed monthly reports to FBA's limited partners. Those reports were mostly concise, one-page statements setting forth the percentage increase or decrease in the value of FBA's investments for the year to date and comparing this performance with the Standard & Poor's 500 Stock Average activity within the same period. The report also contained comments characterizing FBA's overall approach to investment opportunities as "low risk" or "conservative." [2]

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[2] The following are some examples of those comments:

(Footnote continued)

During the period September, 1967, through September, 1968, FBA increased its investment in unregistered securities from approximately 15% to approximately 72%[3] of its portfolio. During this time the monthly reports sent to plaintiffs and all other limited partners uniformly described the company's "investment posture" as "most conservative."

(Footnote continued from previous page)

"We continue to maintain a low risk stance." (Report dated November 2, 1967);

"We remain in a most conservative posture." (Report dated December 1, 1967);

"We have maintained the previously mentioned low risk stance through the current market weakness." (Report dated February 2, 1968); and

"Our investment posture remains most conservative." (Report dated April 2, 1968).

Plaintiffs' Memorandum at 7-8.

[3] There really is no dispute concerning these figures. Defendants FBA, Fleschner and Becker merely contend that the percentage calculations should be based on the total value of FBA's invested assets, rather than limiting the denominator to investments in securities.

Between September, 1968, and September, 1969, FBA's investment in unregistered securities fluctuated from about 72% to 88% of its portfolio. The monthly reports made no mention of the unregistered securities. In either December, 1969, or January, 1970, plaintiffs received the year-end financial statements for September, 1969, prepared by a new accounting firm, and a footnote to the statements revealed that approximately 77% of FBA's total investment in securities consisted of unregistered securities. Allegedly learning of this fact for the first time, plaintiffs withdrew at the earliest possible time after receiving the 1969 statements, that is, September, 1970.

It is undisputed that the following figures represent the capital contributions, interim withdrawals and final distributive shares of the plaintiffs:

Robert Abrahamson

Date	Capital Contributions	Withdrawals
July 1, 1965	$150,000.000	
Sept. 30, 1967		$ 8,000.00
Sept. 30, 1968		32,500.00
Sept. 30, 1969		70,000.00
Sept. 30, 1970		45,500.00
Distributive share on withdrawal from the partnership		150,097.00
TOTALS	$150,000.00	$306,097.00
Net Profit	$156,097.00	

Marjorie Abrahamson

Date	Capital Contributions	Withdrawals
July 1, 1965	$180,000.00	
Oct. 1, 1966	2,652.22	
Sept. 30, 1967		$57,015.70
Oct. 1, 1967	266,847.13	
Sept. 30, 1968		58,000.00
Sept. 30, 1969		52,500.00
Sept. 30, 1970		73,500.00
Distributive share on withdrawal from the partnership		$341,565.00
TOTALS	$449,499.35	$582,580.70
Net Profit	$133,081.35	

Plaintiffs claim of damages in excess of $1,000,000 results from comparing what they actually received when they withdrew from FBA, and the amount they would have received if they had withdrawn as of the end of September, 1968. They assert that they would have withdrawn earlier but for defendants' failure to divulge the existence and extent of FBA's investment in unregistered securities and the omission of this information in the year-end and monthly reports mailed to them. They claim reliance on the statements, reports, and personal representations of Fleschner in retaining their investment in FBA until 1970.

Discussion

All defendants have moved for summary judgment pursuant to Rule 56, F.R.Civ.P., and all defendants have joined in the following contentions: 1) that plaintiffs have suffered no damages; 2) that the FBA agreement of limited partnership signed by plaintiffs authorized the purchase of securities of every kind; 3) that plaintiffs were entitled to inspect FBA's books and records and, therefore, are chargeable with constructive knowledge of the existence of FBA's investment in unregistered securities; 4) that defendants were not "investment advisers" within the meaning of the Investment Advisers Act of 1940. Additionally, defendant Goodkin claims that there were no material nondisclosures in connection with the purchase or sale of a security within the meaning of Rule 10b-5, and that Goodkin did not act in concert with the other defendants. Defendant Ehrlich contends that if any wrongdoing occurred, it did not take place while he was a general partner of FBA.

Plaintiffs have also moved for summary judgment. They assert: 1) that their withdrawal from FBA constituted a "sale" of a "security"; 2) that the alleged nondisclosure occurred "in connection with" the purchase or sale of a

security; 3) that the defendants' nondisclosure of FBA's investment in unregistered securities was a concealment of a material fact; and 4) that "causation" is presumed from the alleged materiality of the nondisclosure.

Defendants' motions for summary judgment must be granted. While summary judgment is not generally favored in this Circuit, and is sparingly granted in complicated securities cases, see, e.g., Schoenbaum v. Firstbrook, 405 F. 2d 215 (2d Cir. 1968)(en banc), cert denied, 395 U.S. 906 (1969), this case presents a situation where summary judgment is appropriate. "The motion will be granted when it raises at least one legally sufficient defense that would bar a plaintiff's claim and involves no triable issue of fact." Wright & Miller, Federal Practice and Procedure, Civil §2734, at 647-48 (3d Ed. 1973). Plaintiffs have suffered no damages and hence have failed to state a cause of action under the Securities and Exchange Act of 1934 or the Investment Advisers Act of 1940.

In granting defendants' motions, it is only necessary to consider the primary contention raised by all defendants, that the figures representing plaintiffs'

contributions, withdrawals and distributive shares plainly show that plaintiffs have suffered no economic injury enabling them to succeed in an action for damages under Rule 10b-5 or Section 206. Plaintiffs concede that the total amounts received from FBA exceed their capital contributions. However, they urge three alternative arguments to support their contention that they are entitled to the difference between the amount they would have received if they had terminated their partnership interests in 1968, and the amount they actually received in 1970.

The first argument is that many of their interim FBA withdrawals were withdrawals of partnership income which should not be counted in determining gain or loss upon liquidation of their interests. Secondly, it is argued that even if all withdrawals are counted in determining the amount received, with a net gain thereby resulting, case law requires awarding them damages in the sum claimed. Finally, they assert that a cause of action which may fail for want of damages under Rule 10b-5 does not necessarily fail under the Investment Advisers Act.

1. The Natue of the Withdrawals

In sum, plaintiffs submit that many of the interim withdrawals consisted of their share of partnership income, akin to the receipt of dividends on stock or of interest on bonds, such sums allegedly being immune from profit/loss calculations in a Rule 10b-5 suit. Because of this purported similarity, it is contended that certain withdrawals should be ignored in determining damages.[4] Defendants counter with a three-fold response: first, the limited partnership interests were not interest-bearing or dividend-paying, and any interim withdrawals were actually deductions from the Abrahamsons' capital accounts; second, the 1967 and 1968 financial statements for FBA reveal net ordinary losses, thereby refuting plaintiffs' claim of withdrawal of partnership income; and third, the characterization of the withdrawal is irrelevant in any event, for payments of any type received from a defendant must be taken into account in computing a plaintiff's damages.

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[4] Even if all the interim withdrawals are deducted, Robert Abrahamson would still have a net gain of $87.00. However, similar total deductions would leave Marjorie Abrahamson with a net loss of $107,834.35.

It is unnecessary to decide the proper characterization of some or even all of the withdrawals, for all payments to plaintiffs, be they considered dividends or interest, must be counted in determining the amount of actual loss that can be recovered in Section 10b litigation.

Few cases have arisen concerning the measure of damages in Rule 10b-5 actions, and none at all concerning the inclusion of interim withdrawals from a limited partnership; I am persuaded that in determining what damages, if any, plaintiffs have suffered, the inclusion of plaintiffs' withdrawals are required. In Fershtman v. Schectman, 450 F. 2d 1357 (2d Cir. 1971), cert. denied, 405 U.S. 1066 (1972), the court could find no damages where a hypothetical limited partner making an initial capital contribution of $10,001.00 would have been repaid $6,600 and would have been entitled to receive $10,426.75 in profits on his diminishing capital balance.

More particularly, the Tenth Circuit has held in a suit for damages under Rule 10b-5 that a buyer[5] "is

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[5] Plaintiffs have consistently maintained that the termination of their partnership interests was a "sale" of securities. However, they also argue that the execution of their 1968 partnership agreement can be viewed as a purchase of securities. Plaintiffs' Memorandum at 44. Consequently, there is no need to consider any possible difference regarding the measure of damages (Footnote continued)

entitled to recover any additional outlays attributable to the defendant's conduct less dividends or any other payments received from the defendant seller," Richardson v. MacArthur, 451 F. 2d 35, 44 n.13 (10th Cir. 1971), quoting Esplin v. Hirschi, 402 F. 2d 94,105 (10th Cir. 1968), cert. denied, 394 U.S. 928 (1969); cf. Fox v. Glickman Corp., 253 F. Supp. 1005 (S.D.N.Y. 1966) (dividends paid by corporation to plaintiff had to be included in the damages determination, but the court characterized the dividends as a return of capital which was not taxable to the stockholders).

In Richardson, the plaintiff had to deduct all dividends and other payments which he received by virtue of possession of stock sold to him by the defrauding seller; the plaintiff also had to deduct all profit which was made in sales of the stock to other buyers. In Schaefer v. First National Bank, 326 F. Supp. 1186 (N.D. Ill. 1970), appeal dismissed, 465 F. 2d 234 (7th Cir. 1972), another buyer's action for damages under Rule 10b-5, named plaintiffs

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(Footnote continued from previous page)

in a buyer's Rule 10b-5 suit versus a seller's suit, though there is little likelihood that any difference remains in this Circuit. See Zeller v. Bogue Electric Manufacturing Corp., 476 F. 2d 795 (2d Cir.), cert. denied, 414 U.S. 908 (1973).

in a class action received consideration in return for an agreement not to execute a judgment against certain defendants. These payments were counted by the court in computing the named plaintiffs' damages. Because the inclusion of the payments resulted in no damages, the securities act count was dismissed. Finally, in Twomey v. Mitchum, Jones & Templeton, Inc., 262 Cal. App. 2d 690, 69 Cal. Rptr. 222 (1968), in a suit brought by the plaintiff customer against the defendant brokerage firm, the court in computing the plaintiff's losses included dividends received and profits made from the sales of stock.

No case law has been discovered or cited which convinces the court that plaintiffs' interim withdrawals should not be counted in determining their gain or loss. In determining the extent of the 10b damages recoverable which is the difference between what they invested in FDA and what they received, the withdrawals must be considered. For Robert Abrahamson, his total withdrawals added to $306,097.00; when compared to his capital contributions, it is determined that Robert Abrahamson received $156,097.00 in profit. Marjorie Abrahamson's withdrawals totaled $582,580.70, giving her a profit of $133,081.35 over her capital contributions.

2. The Measure of Damages in a 10b-5 Claim

The plaintiffs' second argument for both the presence and awarding of damages is that even if withdrawals are counted and result in net gain, and no loss, the law is "plain" that they have suffered damages equal to the difference between what they received upon the termination of their investment in FBA and what they would have received had they terminated at the "appropriate time." The only thing "plain" is that plaintiffs have failed to state a cause of action[6] and have misstated the law.

While Rule 10b-5 litigation has increased dramatically in recent years, few cases have been decided on the merits. Consequently, the stage where damages are calculated has rarely been reached. See 3 Bromberg, Securities Law: Fraud, §9.1 , at 225 (1973); Jennings and Marsh, Securities Regulation 1186 (3d Ed. 1972); Cobine,

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[6] It is assumed arguendo that plaintiffs' limited partnership interests were securities, and that their sale, or purchase, was a sale or purchase of securities for purposes of Rule 10b-5. Fershtman v. Schectman, 450 F. 1357 (2d Cir. 1971), cert. denied, 405 U.S. 1066 (1972); Sultan v. Bessemer-Birmingham Motel Associates, 322 F. Supp. 86 (S.D.N.Y. 1970); Lerman v. Tenney, 295 F. Supp. 780 (S.D.N.Y. 1969); Fox v. Prudent Resources Trust, [Current Binder], CCH Fed. Sec. L. Rep. ¶94,826 (E.D. Pa. 1974).

Elements of Liability and Actual Damages in Rule 10b-5 Actions, 1972 Un. Ill. L. Forum 651. Nonetheless, a "traditional" damages award in 10b-5 actions has developed, and is based on Section 28(a) of the Securities Exchange Act of 1934. That Section reads in part that "no person ... shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of." 15 U.S.C. §78bb(a). While "actual damages" has been most often translated as "out of pocket loss," Section 28(a) has been interpreted so as to allow a defrauded buyer to choose recission instead of the difference between the value of what he gave up and the value of what he received, and to allow a defrauded seller to recover any profits that the buyer has made on resale. See Bromberg, supra, at 226-27; Affiliated Ute Citizens v. United States, 406 U.S. 128 (1972); Zeller v. Bogue Electric Manufacturing Corp., 476 F. 2d 795 (2d Cir.), cert. denied, 414 U.S. 908 (1973).

The Fifth Circuit has stated in Herrich v. Wallace, 430 F. 2d 792, 810 (5th Cir. 1970):

> "The gist of the Rule 10b-5 action for damages is economic injury to the plaintiff resulting proximately from the acts of the defendants which constitute a violation of the rule."

See also Estate Counseling Service, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 303 F. 2d 527, 533 (10th Cir. 1962); Wittner v. Chem. [1964-66 Transfer Binder], CCH Fed. Sec. L. Rep. ¶91,623 (S.D.N.Y. 1966); [illegible] Inc. v. Goodman, 357 F. Supp. 1331, 1333 (N.D. Ill. 1973), rev'd on other grounds, 498 F. 2d 233 (7th Cir. 1974).

A close reading of the cases relied upon by plaintiffs reveals no support for their claim that they are entitled to damages in a situation where no loss has been suffered and where a substantial gain has in fact been made. Initially, Affiliated Ute, supra, is not any authority for the proposition that plaintiffs are entitled to the difference between the fair value of what the seller received and what he would have received had there been no fraudulent conduct. Affiliated Ute did not abandon the "out of pocket loss" measure of 10b-5 damages. This yardstick was extended to award a plaintiff the defendant's profits resulting from a fraudulent purchase if those profits exceeded the plaintiff's "out of pocket loss." See Zeller v. Bogue Electric Manufacturing Corp., supra, 476 F. 2d at 801; Gerstle v. Gamble-Skogmo, Inc., 478 F. 2d 1281, 1304 (2d Cir. 1973). The District Court in Affiliated Ute had found that the white transfer agents had purchased the mixed-bloods' shares for less than fair value; the Supreme

Court noted that "the defendant were in a position to gain financially from [the plaintiff's] sales." 406 U.S. at 153. The Court then stated that the measure of damages to be applied in that case was:

> "the difference between the fair value of all that the mixed-blood seller received and the fair value of what he would have received had there been no fraudulent conduct, ... except for the situation where the defendant received more than the seller's actual loss. In the latter case damages are the amount of the defendant's profit." Id. at 155.

Plaintiffs also rely on the Tenth Circuit's opinion in Mitchell v. Texas Gulf Sulphur Co., 446 F. 2d 90 (10th Cir.), cert. denied, 404 U.S. 1004 (1971). The damages awarded in Mitchell were the amount it would have taken a reasonable investor to reinvest in the TGS market within a reasonable time after he became aware of the true facts. Although this award was higher in fact than an "out of pocket" award would have been, the approach in Mitchell is not applicable in this case. The court was careful in Mitchell to warn that its computation of damages was not a uniform rule with broad application to all securities cases, id. at 105, and the Tenth Circuit has limited Mitchell to its facts. See Richardson v. MacArthur, supra, 451 F. 2d at 43-44. While Mitchell is in probable conflict with Section 28(a), see The

Measure of Damages in Rule 10b-5 Cases Involving Actively Traded Securities, 26 Stan. L. Rev. 371, 379 (1974); 49 Texas L. Rev. 1141 (1971), the conflict need not be resolved since the case before us does not involve a reinvestment situation.

Plaintiffs also misread Janigan v. Taylor, 344 F. 2d 781 (1st Cir.), cert. denied, 382 U.S. 879 (1965). In Janigan, plaintiffs were former shareholders and corporate directors who had sold their shares to the former president of the company in reliance on the latter's representation concerning the future course of the corporation. The defendant purchased the shares for $40,000 and sold them two years later for $700,000. The court awarded his profit to the plaintiffs, stating:

> "It may, as in the case at bar, be entirely speculative whether, had plaintiffs not sold, the series of fortunate occurrences would have happened in the same way, and to their same profit. However, there can be no speculation but that the defendant actually made the profit and, once it is found that he acquired the property by fraud, that the profit was the proximate consequence of the fraud, whether forseeable or not. It is more appropriate to give the defrauded party the benefit even of windfalls than to let the fraudulent party keep them ... it is simple equity that a wrongdoer should disgorge his fraudulent enrichment."
> Id. at 786.

To the same effect are Myzel v. Fields, 386 F. 2d 718 (8th Cir. 1967), cert. denied, 390 U.S. 951 (1968), and Affiliated Ute, supra. However, those cases can have little application here where there is no allegation of wrongful profit and in fact substantial agreement exists that the defendants have not been enriched as a result of their allegedly fraudulent conduct and have no profits to disgorge.

Plaintiffs' final reliance is placed on Travis v. Anthes Imperial Ltd., 473 F. 2d 515 (8th Cir. 1973). In Travis, the Eighth Circuit held that plaintiffs had standing to sue defendants under Rule 10b-5 where the plaintiffs alleged that the defendants' misrepresentations encouraged them to hold their stock until the defendants controlled the market in that stock. The plaintiffs in that case claimed that they "would have sold their stock earlier when a market ... existed and the price was higher." Id. at 521. The facts in Travis do not reasonably lead to the conclusion that the plaintiffs enjoyed a net gain, as here, before instituting suit. Moreover, Travis does not support the standards for awarding damages which plaintiffs assert are applicable. Travis has consistently been read as a purchaser-seller case following either Vine v. Beneficial Finance Co., 374 F. 2d 627 (2d Cir.),

cert. denied, 389 U.S. 970 (1967) ("forced seller" exception); or Stockwell v. Reynolds & Co., 252 F. Supp. 215 (S.D.N.Y. 1965) ("aborted seller" exception). See, e.g., Smallwood v. Pearl Brewing Co., 489 F. 2d 579, 593 (5th Cir. 1974); Manor Drug Stores v. Blue Chip Stamps, 492 F. 2d 136, 140 (9th Cir. 1973); In re Penn Central Securities Litigation, 367 F. Supp. 1158, 1173 (E.D. Penn. 1973); Getter v. R. G. Dickinson & Co., 366 F. Supp. 559, 563-64 (S.D. Ia. 1973).

Based on my reading of the case law in this and in other circuits, I am confident that plaintiffs have suffered no actionable harm measurable in damages under Rule 10b-5. Fershtman v. Schectman, supra, involved a complaint alleging a variety of misrepresentations and nondisclosures in connection with a purchase of certain limited partnership interests and their subsequent "forced sale" upon the termination of the limited partnership. The court held that the facts did not give rise to a suit under Rule 10b-5 but rather supported a claim for reformation of the partnership agreement under state law. One ground on which the court relied for dismissing the complaint for want of jurisdiction was the absence of damages:

> "Beyond that the plaintiffs have suffered no damage from making their investments; rather they have reaped large profits." 450 F. 2d at 1361.

The Second Circuit's decision in Levine v. Seilon, Inc., 439 F. 2d 328 (2d Cir. 1971), also seems to preclude the rule of damages which plaintiffs advance. That case involved a 10b-5 claim by a former preferred stockholder of defendant. The plaintiff had alleged that the corporate defendant falsely represented that it would honor a commitment to give preferred shareholders the opportunity to exchange their stock for common stock. The market price for preferred stock rose to reflect the future exchange. The corporation never made the exchange; instead it redeemed the preferred stock. Plaintiff claimed that he was misled into retaining his stock in anticipation of the exchange, arguing that he was damaged because he could have sold the shares on the market at a substantially higher price than the redemption acquisition price which he ultimately received. In affirming dismissal of the 10b-5 action, the court summarized the rule of damages in 10b-5 cases as follows: a defrauded buyer can recover only the excess of what he paid over the value of what he received; a defrauded seller is allowed to recover not only the

difference between the actual value and what he received at the time of sale, but also any additional profits which the fraudulent buyer has actually realized or which the seller would have received had the seller held the stock for a reasonable time after disclosure.[7] The court found that the defendant had obtained no "enrichment" and received no windfall as a result of the redemption. In fact, the stockholders received "a good deal more" than what the stock was worth:

> "The plain fact is that save for the possibility of selling to an innocent victim, Levine lost nothing from Seilon's alleged fraud except the euphoria he doubtless experienced during the summer and fall of 1968. This does not constitute the "actual damages," see §28(a), compensable under §10(b) of the Securities Exchange Act or Rule 10b-5." Id. at 335.

Like Seilon, FBA has obtained no enrichment, and, like Levine, the Abrahamsons have not been damaged.

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[7] Two years later the Second Circuit modified its statement in Levine and said that a defrauded buyer could also obtain, in addition to the usual measure of damages, windfall profits received by the defrauding party. See Zoller v. Bogue Electric Manufacturing Corp., supra n.5.

Wolf v. Frank, 477 F. 2d 467 (5th Cir.), cert. denied, 414 U.S. 975 (1973), lends further support to defendants' motion. Plaintiffs purchased 37,500 shares in IGB Corporation for $75,000 in reliance on various representations made by defendants. Within six months of the purchase, plaintiffs had sold approximately 23,000 of their shares for $95,000. Plaintiffs sued the defendants individually and derivatively as stockholders of IGB, charging that the defendants had failed to fulfill their promises and alleging conduct generally violative of Rule 10b-5. The Court of Appeals agreed with the lower court's finding that the plaintiffs were not entitled to individual relief because they failed to show any actual damages, since they had made a profit of roughly $20,000, over and above the value of the IGB shares which had been retained.

Moreover, a finding of profit is not even required to defeat an action for damages under Rule 10b-5; an absence of actual loss is sufficient. The District Court in Lewis v. Bogin, 337 F. Supp. 331 (S.D.N.Y. 1972), granted summary judgment for defendants on plaintiff's 10b-5 suit attacking a consummated merger. The merger was conceivably in violation of the securities laws. However, plaintiff suffered no damage, and hence had no valid 10b-5 claim, where his stock commanded

the same price before and after the merger. The court in Madigan, Inc. v. Goodman, supra, similarly granted defendant's motion for summary judgment where plaintiff sold his stock for approximately the same amount at which it was acquired. Since plaintiff suffered no loss, he had no cause of action under Rule 10b-5. Because plaintiffs have failed to establish actual damages here, their 10b-5 claim is fatally defective. [8]

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[8] The only case remotely contra is Stevens v. Abbott, Procter & Paine, 288 F. Supp. 836 (E.D. Va. 1968), where the court rejected the "out of pocket" rule as an appropriate measure of damages in a 10b-5 case alleging excessive churning. Net profit would not be an absolute defense to such an allegation when a court might reasonably award a plaintiff the commission charged by and paid to the broker defendant. In effect, such a defendant would be forced to disgorge profits resulting from fraudulent conduct violative of Section 10b. As discussed earlier, there has been no allegation of defendants' enrichment due to the nondisclosure.

3. The Measure of Damages in a §206 Claim Under the Investment Advisers Act

Plaintiffs' final point is that any "out of pocket" limitation on a private suit under Rule 10b-5 is inappropriate in a damages action pursuant to Section 206 of the Investment Advisers Act of 1940. The principal basis for this argument appears to be the absence in the Act of any provision similar to Section 28(a) of the 1934 Act. No other authority is cited for this proposition.

While the rule requiring actual damages in 10b-5 actions is not necessarily applicable to every situation involving the securities laws, see, e.g., Voege v. Ackerman, 364 F. Supp. 72 (S.D.N.Y. 1973) (where proxies necessary for approval of merger were obtained in a materially misleading manner, the District Court might order an accounting to insure that the shareholders received the value that was represented as coming to them); Stevens v. Abbott, Proctor & Paine, 288 F. Supp. 835 (E.D. Va. 1968), the few cases arising under the Investment Advisers Act do not suggest that the rule under Section 206, the anti-fraud provision, is any different. See Bolger v. Laventhol, Krekstein, Horwath & Horwath, [Current Binder], CCH Fed. Sec. L. Rep. ¶94,739 (S.D.N.Y. 1974); Courtland v. Walston

& Co., Inc., 340 F. Supp. 1076 (S.D.N.Y. 1972); Wiegenberger v. W. E. Hutton & Co., 35 F.R.D. 556 (S.D.N.Y. 1964). These three cases involved alleged violations of both Section 206 and Rule 10b-5, and the Bolger and Courtland courts noted the obvious similarity between the language of the Section and the Rule, CCH Fed. Sec. L. Rep. ¶94,739 at 96,456; 340 F. Supp. at 1083, a point with which plaintiffs are in express agreement. Plaintiffs' Reply Memorandum at 17. The Courtland decision also held at 1093 that an adequate measure of damages would be one "based on the monetary loss actually and proximately resulting from the acts complained of", language virtually identical to the words used in Section 28(a) of the Securities Exchange Act.

Finally, such an inconsistency between Rule 10b-5 and Section 206 would create an "unfortunate dichotomy" between the acts, see Globus v. Law Research Service, Inc., 418 F. 2d 1276 (2d Cir. 1969), cert. denied, 397 U.S. 913 (1970); Bolger, supra, and no authority or persuasive rationale warrants reaching for such a conclusion.

In sum, as plaintiffs hav shown no damages compensable under law, summary judgment is granted to all defendants.

SO ORDERED.

Dated: New York, New York
March 4, 1975

ROBERT L. CARTER
U.S.D.J.

Judgment

FILED
MAR 27 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON Plaintiffs	:	71 Civil 344 (RLC)
-against-	:	JUDGMENT
MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY Defendants	:	

Defendants having moved the Court for summary judgment pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Robert L. Carter, United States District Judge, and the Court thereafter on March 4, 1975, having handed down its opinion granting the said motion as to all defendants, it is,

ORDERED, ADJUDGED and DECREED: That defendants MALCOLM K. FLESCHNER, WILLIAM J. BECKER, HAROLD B. EHRLICH, FLESCHNER BECKER ASSOCIATES, and HARRY GOODKIN & COMPANY, have judgment against plaintiffs ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON, dismissing the complaint.

Dated: New York, N.Y.
March 27, 1975

Raymond F. Burghardt
Clerk

MICROFILM
MAR 27 1975

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - x

ROBERT ABRAHAMSON and MARJORIE ABRAHAMSON,

Plaintiffs,

-against-

MALCOLM K. FLESCHNER, et al.,

Defendants.

- - - - - - - - - - - - - - - - - - - x

71 Civ. 344 (RLC)

NOTICE OF APPEAL

S I R S :

PLEASE TAKE NOTICE that Robert Abrahamson and Marjorie Abrahamson, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the Order dated and entered on March 4, 1975, granting defendants' motion for summary judgment dismissing the complaint, and denying plaintiffs' motion for summary judgment for the relief demanded in the complaint, and from each and every part of such Order.

Dated: New York, New York
March 27, 1975

Yours, etc.

SHEA GOULD CLIMENKO KRAMER & CASEY

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TO:

CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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JUL 23 1975

SULLIVAN & CROMWELL

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